No. 6217

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

JOHN E. PENNINGTON, ET AL.,

Appellants,

v.

CITY OF CORPUS CHRISTI, ET AL.,

Appellees.

On Appeal From the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting at San Antonio, Texas

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Opinion Below

The opinion of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas is reported in 363 S. W. 2d 502. A copy of that opinion is in the appendix to this statement, pages 32-36.

Jurisdiction

On December 12, 1962, the Court of Civil Appeals of Texas enterd the judgment appealed from

(App. pp. 36-37; and on January 9, 1963 it overruled appellants' motion for rehearng (App. p. 38). Within the time required by the Texas Rules of Civil Procedure the appellants filed their application for writ of error in the Supreme Court of Texas which was refused as presenting no error requiring reversal of the judgment of the Court of Civil Appeals (App. pp. 38-39); the order was dated April 17, 1963, and within fifteen days on April 30, 1963, the appellants filed their motion for rehearing on the application for writ of error in the Supreme Court of Texas which motion was on July 10, 1963, overruled by that court whereupon the judgment of the Court of Civil Appeals became final, (App. p. 39). On September 19, 1963, the appellants filed in the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas their notice of appeal to this Court, (App. p. 70). The jurisdiction of this Court rests on 28 U. S. C. § 1257 (2). Appellants' authorities and arguments in support of this Court's jurisdiction appears on pages 15-31 below.

THE NATURE OF THE PROCEEDING: The City of Corpus Christi, Texas, joined by Harry A. Grim, Jack Edwards and J. S. Ray, the appellees, filed this suit in the District Court of Nueces County, Texas, against John R. Pennington, individually and as representative of a class, the appellants, seeking to establish the validity of the annexation of some fifteen (15) square miles of territory as a part of the City. John R. Pennington, Jim Coffman and several others, appellants, as members of said

class, answered and filed a cross-action questioning the validity of such alleged annexation and asserting that a part of said territory had been incorporated as a town or village. The case was tried before a jury. The jury answered the two key issues on the question of annexation favorable to the appellants. The trial judge disregarded the jury verdict as to the annexation and rendered judgment sustaining the annexation as legal and valid. This appeal is from the judgment of the Court of Civil Appeals affirming that Judgment

Cases Believed to Sustain the Jurisdiction:

Home Telephone & Telegraph Company v. City of Los Angeles, et al., 227 U. S. 278, 33 Sup. Ct. 312; Kansas City Southern Ry. Co. et al. v. Road Improvement Dist, No. 3 of Sevier County, Arkansas, et al., 266 U. S. 379, 45 Sup. Ct. 136; Northern Pacific Ry. Co. et al. v. Department of Public Works of Washington, et al., 268 U. S. 39, 45 Sup. Ct. 412; First National Bank of Guthrie Center v. Anderson County Auditor, et al., 269 U. S. 341, 46 Sup. Ct. 135; Browning, et al. v. Hooper, et al., 269 U. S. 396, 46 Sup. Ct. 141; Abie State Bank v. Weaver, Governor of Nebraska, et al., 282 U. S. 765, 51, Sup. Ct. 252; Lovell v. City of Griffin, Georgia, 303 U. S. 444, 58 Sup. Ct.. 666; Hague, Mayor, et al. v. Committee for Industrial Organization, et al., 307 U. S. 496, 59 Sup. Ct. 954; Chesebro v. Los Angeles County Flood Control District, et al., 306 U. S. 459, 59 Sup. Ct. 622; Schneider v. State of New Jersey (Town of Irvington). Young v. People of State of California.

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City Charter Provision and Ordinance Involved:

The City of Corpus Christi, Texas, may annex territory under the following Charter provision:

"An Act to Grant A Charter for the City of Corpus Christi, in Nueces County, Texas

"Validating the Acts of the Said City as it Heretofore Existed, Repealing All Laws and Parts of Laws in Conflict Herewith, and Declaring an Emergency. Be It Enacted by the Legislature of the State of Texas:

"ARTICLE I

"Section 1. INCORPORATION. The Inhabitants of the City of Corpus Christi, Texas, within its corporate limits as established by Chapter 33, Pages 304-351, Special Laws of Texas, 1909, 31st Legislature, Regular Session, and as established or extended by the Charter of the City of Corpus Christi, Texas, as heretofore or hereafter amended, and as established or extended by ordinances of the City of Corpus Christi, Texas heretofore or hereafter enacted, be and are hereby constituted a body politic and corporate, in perpetuity, under the name "CITY OF CORPUS CHRISTI," hereinafter referred to as the "City," with such powers, privileges, rights, duties and immunities as are herein provided. (Amendment adopted May 25, 1955).

Section 2. ANNEXATION. The City of Corpus Christi is empowered to annex additional territory adjoining or lying adjacent to the City on the manner set forth in either of the following sub-sections (a), (b), or (c).

(a) The question of annexation of a given territory may be submitted to the qualified voters of the City at an election duly called for such purpose; and if a majority of such qualified voters voting at such election favor the annexation of such territory, the same shall be annexed by ordinance of the City Council; and when any additional territory has been so annexed, the same shall be a part of the City of Corpus Christi and the property therein shall bear its pro rata part of the taxes levied by the City, and the inhabitants thereof shall be entitled to the rights and privileges of all the citizens, and shall be bound by the acts, ordinances, resolutions and regulations of the City. *Such question of annexation of any given territory may be submitted to the qualified voters of the City at any time upon the majority vote of the members of the Council.* The question of annexation of any given territory *may come before the Council for consideration upon either (1) the will of the Council*, or *(2) the written recommendation of the Zoning and Planning Commission of the City*, or *(3) petition signed by not less than 1,500 qualified voters of the City*, or *(4) petition signed by not less than 10% of the qualified voters residing in the territory proposed to be annexed.*"

Corpus Christi City Ordinance No. 6206, the validity of which is questioned is copied on pages 43 to 61 of the appendix, and Ordinance No.

6242 which is questioned is copied on pages 62 to 70 of the appendix, they being too lengthy to copy here.

Questions Presented

1. Whether the City Ordinances of the City of Corpus Christi numbered 6206 and 6242, attempting to annex the Flour Bluff territory in July and August, 1961, which territory was, by the pleadings of appellees, judicially admitted "*is in fact an area of more than ten (10) square miles having therein, small residential developments at widely separated points therein and other residential use scattered at various points within the said area and having at least eight (8) square miles of said area unplatted as lots or blocks, having no semblance of urban development and wholly unsuitable for use for strictly town purposes and not intended to be used for strictly town purposes.*" (Tr. p. 8), and at a time when the City of Corpus Christi was not, and would not be within the foreseeable future, in any position, financially or otherwise, to furnish said area municipal services in return for the taxes collected by the city from the property owners within said area, is a taking of the property of appellants, and other taxpayers similarly situated in said area, without due or just compensation, or not in due process of law, contrary to the provisions of the 14th Amendment to the Constitution of the United States.

2. Whether Ordinance No. 6206 passed on July 12, 1961, calling an election in Corpus Christi to determine whether the City Council should annex

certain territory is in violation of the 14th Amendment to the Constitution of the United States when there is no law, or Constitutional provision, in Texas or provision in the Charter of Corpus Christi for notice and public hearing, or any other hearing, on the matter of annexation of territory upon petition of inhabitants of the area to be annexed.

3. Was the arbitrary, unreasonable and unjust act of the City of Corpus Christi, in the attempted annexation of the Flour Bluff area, in violation of the 14th Amendment to the Constitution of the United States, providing that no state shall deprive any person of life, liberty or property without due process of law?

4. Was the failure and refusal of the City of Corpus Christi to comply with the charter of Corpus Christi and the laws of Texas, on annexing territory in the attempted annexation of the Flour Bluff area, in violation of the 14th Amendment to the Constitution of the United States, providing that no state shall deprive any person of life, liberty or property without due process of law?

Statement

The prayer to the appellees' first amended original petition shows the purpose of the suit. It in part says: ". . . that upon final judgment, the said annexation ordinances of the City be declared in all things valid and effective and that said territory hereinabove referred to as 'annexed area' be declared validly annexed to and a part of the in-

corporated City of Corpus Christi, Texas, and within the corporate limits of said City, . . ." (Tr. p. 9)

In their first amended original answer, among other things, the appellants alleged:

> "(q) The area on the East side of the Cayo del Oso is in no way essential to municipal needs of the City of Corpus Christi and no direct or indirect benefits will accrue to the owners of property within said territory by annexing same to the said City of Corpus Christi immediately or reasonably prospective. Said territory is wholly unrelated to the City of Corpus Christi's present or reasonable prospective economic or municipal needs and *the attempted annexation of said territory is unreasonable and arbitrary and invalid as an unwarranted depriving of the property or a taking thereof in violation of the due process of law and without compensation provisions of the state and federal Constitutions.*" (Tr. p. 43)

> "(r) As fully shown by the foregoing allegations of facts and circumstances surrounding the alleged annexation of the Flour Bluff area of Corpus Christi, the alleged annexation is unreasonable, arbitrary, unjust and void and will have the effect of taking the property from the owners thereof by taxation without due process of law and without giving in return therefor any value to the owners of said property." (Tr. p. 43)

In the first question presented above quotation has been made from paragraph 3 of section IX of appellees' first amended original petition which quotation is here adopted. (Tr. pp. 7-8)

The annexation involved was instituted by an alleged petition filed with the City Council on January 4, 1961. (Pltf's Ex. No. 3) On its face the petition shows 101 names but three names appear on the petition twice leaving 98 names on the petition. (St. of f. vol. 2 pages 149-150) Checking the names on the petition (Pltf's Ex. No. 3) against the List of Voters (Deft's Ex. No. 14) there are 26 names on the petition that were not qualified voters. (St. of f. pp. 148-49) Checking the petition against the List of Voters(Dft's Ex. No. 15) there are 29 names on the petition that weren not qualified voters, (St. of f. p. 150). That fact is verified by making the comparisons. When the petition was presented to the City Council it was "received and filed." (St. of f. p. 15) From January 4, 1961, to July 10, 1961, no one sponsored the petition and no action was taken on the same by the City Council. (St. of f. pp. 29-31) Ray Kring, City Secretary, "checked" the petition against the poll tax but not immediately after January 4, 1961. He was asked "When did you check it?" and he answered "Oh, I think after this lawsuit sometime, to file this lawsuit." (St. of f. pp. 73-74)

The list of voters applicable is defendants' exhibit No. 14, February 1, 1960, to January 31, 1961, showing 981 total qualified voters.

Kring referred to his memorandum of the "work shop" un-official meeting of the City Council on July 10, 1961, when a group requested the Council to consider the petition filed January 4, 1961, and

said "It didn't say anything about referring it to someone to be checked. The only action taken then was the Council discussed it at the urgence of the delegation and ordered it to be put on the agenda." (St. of f. pp. 76-77 and 80) Nothing else was done about the petition on that date. The regular Council meeting came July 12, 1961.

Mr. Lozano, a City Commissioner on January 4, 1961, when the petition was filed with the City Secretary, speaking about the petition, said:

> "It was the consensus of opinion the City was not in position to annex any more property and accept the responsibilities that go along with it." (St. of f. p. 120 vol. 1)

The petition was not put on the agenda for formal consideration. (St. of f. p. 120 vol. 1) Lozano further said:

> "Well, I think it is my conclusion, yes, because the little discussion that was made, I believe it was a majority of the opinion that was the position, the City could take at the time, not being able to annex, giving it the assurance of fire protection and police protection, and perhaps the repair of the streets or highways going through, and the drainage situation, because it takes quite a bit of money, and the City felt, after a little discussion, it wasn't in any position to annex any more land than it had been able to serve at the time." (St. of f. p. 121 Vol. 1)

From the City limits, as of July 12, 1961, to the body of the land annexed the distance is two and

two-tenths (2.2) miles. (St. of f. p. 151 and 160-161, Vol. 2.) Ordinances numbered 6206 and 6242, copied in the appendix, and the petition of January 4, 1961, (Pltf's Ex. No. 3) all show that a strip of land 200 feet wide, being 100 feet on either side of Lexington Avenue, from the City limits to the East side of Cayo del Oso, a bay, was used as a means of connecting the City of Corpus Christi to the Flour Bluff area, a distace of two and two-tenths miles.

The jury in the case made two findings of facts that are important on the annexation. In answer to issue No. 1, the finding is that after the filing of said petition on January 4, 1961, the petitioners did not, in good faith, pursue and prosecute said petition in the City Council between said date and July 10, 1961. In answer to issue No. 5 the jury said that the alleged annexation of the Flour Bluff area to Corpus Christi was unreasonable, unjust and arbitrary at the time. (Tr. p. 49) In connection with issue five the court defined arbitrary as fixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things, non rational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power. (Tr. p. 68)

A casual inspection of the petition (Pltf's Ex. No. 3) shows that many of the names thereon were signed in pairs and by the same hand, such as, W. D. Allen and Virgina P. Allen, by the same hand, Charles L. Rankin and Thula B. Rankin, by the same hand, James C. Allen and Mrs. J. C. Allen,

by the same hand as the two previous Allens, Harry A. Grim and Mrs. Harry A. Grim, by the same hand, William F. Baker and Mrs. Ruby F. Baker, by the same hand, S. W. Heatherly, V. L. Heatherly and J. S. Heatherly, by the same hand, J. W. Roper and Mrs. J. W. Roper, by the same hand, Mrs. F. J. Graham and F. J. Graham, by the same hand, Louis L. Cox and Mrs. Louis L. Cox, by the same hand, Sarah F. Chapman and A. C. Chapman, by the same hand, Jack E. Ferguson and Mrs. Virginia Ann Ferguson, by the same hand, Charles R. McEntire and Edna F. McEntire, by the same hand, Walter F. Bridges and Mrs. Mona Bridges, by the same hand, Mrs. Ira Blockwell and Ira Blockwell, by the same hand, R. H. Boyd and Mrs. M. Boyd, by the same hand, W. A. Lawrence and Felice C. Lawrence, by the same hand, J. H. Bostick and Eva Bostick, by the same hand, Clemmie (M. Wood) Shodoon and O. L. Shodoon, by the same hand, H. W. Awalt and Eva Awalt, by the same hand, M. H. Hammon and Mrs. M. H. Hammon, by the same hand, J. P. Vermuelen and Dorothy Mae Vermuelen, by the same hand, J. E. Chandler and Mrs. J. E. (Martha P.) Chandler, by the same hand, Paul Johnson and Amy ? Johnson, by the same hand. Mae Tubiolo and Toy Tubiolo, by the same hand. Phil Towers and Mrs. Phil Towers, by the same hand, and there are other possible pair signings on the petition. These conclusions are verified by the the witness Ford Green, an expert on questioned documents, in his affidavit attached to the appellants' motion for new trial in the District Court. (Tr. pp. 98-100)

On July 11, 1961, the County Judge of Nueces County was presented a petition signed by the required qualified voters within a part of the Flour Bluff area seeking the calling of an election to determine whether the area, by a vote of the qualified voters in the territory,, should be incorporated as a town or village. After examination of the petition and full investigation the Judge called an election for incorporation to be held on August 5, 1961. (St. of f. pp. 180-187, and Pltf's Ex. No. 17) On the next day the City of Corpus Christi called the election for annexation to be held on August 5, 1961, the same date. (Ordinance No. 6206, Pltf's Ex. No. 5)

The federal quesiton was presented to the Court of Civil Appeals by the Fifth Point in appellants brief pages 3 and 17, and in appellants' Motion for Rehearing in the Court of Civil Appeals in the following language:

> "The attempted annexation of the territory in question was not in due process of law and violated the due process provisions of the Constitution of the United States, being the 14th Amendment, and the Court of Civil Appeals erred in not so holding." (Fifth Point)

And:

> "The provision of the City Charter of the City of Corpus Christi, which authorizes the annexation of territory to the City of Corpus Christi without the consent or the right to be heard by vote, or otherwise, by the qualified

> property owning taxpayers residing within such proposed annexed territory, is void in that such is a taking of the property of the property owners in violation of the 14th Amendment of the Constitution of the United States, and the Court of Civil Appeals erred in not so holding." (Motion for Rehearing p. 4) (12th Point)

And:

> "The Court of Civil Appeals erred in affirming the judgment of the trial court, for to permit the annexation of the territory in question to stand under the record in this case is to sanction that which is clearly a legal fraud upon the property owners within the Flour Bluff area, imposing upon them unnecessary burdens within the infliction of taxes, regulations and restrictions in violation of the 14th Amendment to the Constitution of the United States." (Motion for Rehearing p. 6, 23rd Point)

The same points on the federal question were presented to the Supreme Court of Texas in the Application for Writ of Error, Point Third page 26, Fifth Point page 51, Twelfth Point page 53 and Twenty-third Point page 56, and was submitted in the Motion for Rehearing in the Supreme Court of Texas pages 1-2.

Copies of the opinion of the Court of Civil Appeals and the judgment and orders of that Court, and the orders of the Supreme Court of Texas, are in the appendix hereto attached. Each State Court in effect ignored the presentation and overruled the

points by implication and by holding that the annexation was legally accomplished.

Part of Nueces County Water Control and Improvement District No. 2 is incorporated within the alleged annexed area. This fact is established by the testimony of Mr. J. R. Sorrell, attorney for the District testifying for the appellees. (St. of f. pp. 220-224, Vol. 2) That district is established under the laws of Texas relative to Water Districts and *Chapter 3a, Vernon's Civil Statutes of Texas* wherein *Article 7880-51* provides that "All courts shall take judicial knowledge and notice of the establishment of a district and the boundaries thereof . . ." The district is, under the law, created for the purpose of issuing bonds to sell to acquire money for equipment and operating the district for domestic water supplies, etc. There is no provision in the City Charter of Corpus Christi for annexing any part of said water district. There is a statute providing for annexation of all or a part of such a water district, being *Article 1182a, Vernon's Civil Statutes of Texas*, copies in the appendix hereto.

Argument

In this case sixty-one (61) out of nine hundred eighty-one (981) voters in the area involved, through the aid of the City Council of the City of Corpus Christio, have bound the other nine hundred twenty (920) voters and their lands, totaling about fifteen (15) square miles of area, to be annexed to the City of Corpus Christi, without the privilege of being heard before the Council as to the sufficiency of the

petition, or any other pertinent matter, and without the nine hundred twenty (920) voters having been given an opportunity to express their wills by a vote on the annexation. There is no provision in the City Charter or the law of Texas for a hearing to be had on the petition for the proposed annexation in this case. The alleged annexation also includes a part of Nueces County Water Control and Improvement District No. 2, which is a municipal corporation, which, under the law, all courts shall take judicial knowledge and notice of its establishment and boundaries. *Article 7880-51, Vernon's Civil Statutes of Texas.*

By the provisions of Article 1, Section 2, of the Charter of the City of Corpus Christi, the first step to be taken in the annexation of the territory involved is a petition *signed by not less than ten per cent (10%) of the qualified voters*, residing in the territory proposed to be annexed. There are one hundred one (101) names on the petition; of that one hundred one (101) the name "Walter F. Bridges" appears on page 1 and page 6 of the said annexation petition; the name "E. G. Ritter" appears on page 2 and page 3 of that petition; the name "Clemmie N. Shodoon" appears on page 5, and the same woman appears on page 6 as "Clemmie N. Wood Shodoon"; therefore, deducting the three (3) duplicates, we have ninety-eight (98) names. As to the signatures, the city attorneys say that a husband may sign for his wife, or vice versa. That may be true on a private treaty between landowners and a city, but, such is not true where the

City Charter requires that all of the parties must be qualified voters, and the petition must be signed by the voter. However, the petition for annexation shows on page 2 five Allens, all of the names "Alien" showing to have been written by the same hand. Then, on page 3 of the annexation petition there are three "Hetherlys", all written in the same hand, and such could not have been a husband signing for a wife, or vice versa. In all, there are twenty-nine (29) names on the petition written there by someone not the person whose name is so written. This fact is verified by Mr. Ford Green in his affidavit which was attached to the Appellants' motion for a new trial in the trial court. Mr. Green is an expert on examining question documents. There are twenty-six (26) names on the petition of persons who are not qualified voters. Consolidating the twenty-nine (29) names and the twenty-six (26) names, there were thirty-seven (37) names on the petition that are not qualified under the Charter to appear on that petition. Eighteen (18) of the twenty-nine (29) were not qualified voters. Deducting the thirty-seven (37) from the ninety-eight (98) names on the petition, there are left sixty-one (61) legitimate signatures on the petition. That is not even a substantial compliance with the requirement of the said provision of the City Charter. Therefore, the first step required by the City Charter was not complied with, and due process of law was and is lacking.

The City Charter of the City of Corpus Christi forbids the City Council taking in more than two

hundred feet (200') of a highway, road, street, alley, sidewalks, parks, or any other ground which is owned by any political subdivision or which has been dedicated to public use. The undisputed record in this case shows that Lexington Boulevard is State Highway 358 and that the East side of the Oso Bay is more than two and two-tenths (2.2) miles from the nearest point of the City limit. Furthermore, the case of *City of Irvin vs. Carl B. Callaway, 363 S. W. 2d 832* says that such territory is not "adjoining or lying adjacent to the city". The alleged annexation petition and ordinances are void for many reasons, as hereinbefore demonstrated, including the violation of the City Charter and *Article 1182a, Vernon's Texas Civil Statutes.*

The petition is inherently defective and did not vest jurisdiction in the city to annex any territory. *Town of DeKalb v. State ex rel King, 71 S. W. 2d 299, 302.*

The alleged petition for annexation was presented for filing on the 4th day of January, 1961, and at that time, according to Mr. Gabe Lozano, whose testimony is undenied, it was the concensus of opinion of a majority of the members of the City Council that the City was not in a position to annex any more territory and accept the responsibilities that go along with the annexation (S. F. page 120, lines 4-7). The majority of the Council was of the opinion that the City, not being able to give new territory the assurance of fire and police protection, the repair of streets or highways going through the area,

the drainage of the area, since such takes plenty of money, as well as the inability to furnish the area other services, was in no position to annex any more land to the City of Corpus Christi and declined to consider the petition for annexation. The petition was not put on the agenda for formal consideration in January, nor any other time thereafter by either the Elroy King administration or the Ben McDonald administration (S. F. page 119, lines 24-25; page 120, lines 2-16; page 121, lines 3-10).

Mr. Ray Kring, city secretary, is the only person who examined the names on the exhibit 3, the petition seeking annexation (S. F. page 7), which was filed on January 4, 1961, and he made his examination only to aid the attorneys in filing this suit. Between the date of January 4, 1961, and July 10, 1961, when a small delegation presented itself to the Council at the unofficial "workshop" session, no other delegation came before the Council or before the city secretary with reference to the matter of the alleged annexation petition (S. F. pages 26 and 31).

Mr. Kring, at the request of counsel for the Appellants, searched the records to determine what, if anything, had been done toward examination of the alleged petition for annexation at any regular or workshop meeting between January 4, 1961, and July 12, 1961. He said the council permitted the petition to be filed at the regular meeting of January 4, 1961, but, the records make no reference of the petition having been so filed (S. F. page 73, lines 13-15). He said that during that time the

petition for annexation was not referred to him, or anyone else, to be checked against the poll list of Precinct 18, the Flour Bluff area; that the minutes just read that the petition was "to be received and filed," (S. F. page 73, lines 16-20) and that was all that was done (S. F. page 73, lines 21-22). Mr. Kring checked the petition against the poll tax, but, not immediately following that date. He checked the petition after this lawsuit sometime, or, to prepare for the filing of this lawsuit. (S. F. page 73, lines 23-25 and page 74, lines 1 and 2). He further shows that the petition was not considered by the City Council, nor anyone else, relative to the same having complied with the City Charter until he did so for the purpose of filing this suit, and that he did not recall what the results were, though he gave the results of his examination to the attorneys for the preparation of this suit (S. F. pages 75, 76, 77, 79 and 80). That was after July 12, 1961.

The foregoing facts being undisputed, it is apparent that the City Council did not itself, nor did it have anyone in good faith, examine the petition before, or at the time of the calling of the election for annexation. That defective petition was approved and the election called in what was no doubt wilful ignorance as to its contents and sufficiency. "Wilful ignorance is the equivalent of bad faith and bad faith may be shown by a wilful disregard of or refusal to learn the facts when available and at hand". *Citizens Bridge Co. vs. Guerra, 258 S. W. 2d 64, 69-70, by the Supreme Court of Texas.*

The jury, in finding that the City Council acted unfair, unjust and arbitrarily, found against the good faith of the City Council. At any rate, since the City filed this suit, the burden was on the City to prove and obtain a jury finding that it did act in good faith in connection with the annexation of the Flour Bluff area.

The question of arbitrary acts comes up often on testing the action of architects and engineers being the final judge of the performance of contracts. The issue of whether the engineer acted arbitrarily is always submitted to the jury in jury cases. Such a case is *Goodrup v. State, 158 S. W. 2d 81, 86-87*, writ ref. want of merit, where the Court says:

> "The word 'arbitrary' has been used on numerous occasions by our courts in defining the type of conduct which would prevent the decision of an architect or engineer from becoming final and has been expressly held to contemplate 'bad faith'. It is defined as failure to exercise an honest judgment. Friedo v. White Co., D. C. 244 F. 272."

The jury finding that the Council acted unreasonable, unjust and arbitrarily in calling the election for annexation includes the element of bad faith and want of good faith. The jury was instructed as to the meaning of the word "arbitrary" and in answering that issue found that the Council acted in abuse of discretion and want of good faith. Mr. Ray Kring testified that he "checked" that petition for the purpose of filing this suit. He was acting for his masters, the city attorneys, and if he or they

did not find the petition short of signatures and qualified voters, then, they all are, and were, guilty of wilful ignorance, for the want of sufficient qualified voters and signatures is obvious. The petition was available and at hand for their use to determine the fact.

> "It appears to have been decided by the great weight of authority that wilful ignorance is the equivalent of bad faith; and that bad faith may be shown by a wilful disregard of and refusal to learn the facts when available and at hand. Joyce Defense to Commercial Paper, 2d, Ed., para. 694, p. 976; In re Hopper-Morgan Co., D. C. 156 F. 525, and authorities there cited on page 530.
>
> "In the case of Murry v. Lardner, 2 Wall 110, 121, 17 L. Ed. 857, the Supreme Court of the United States said:
>
> "The rule may perhaps be said to resolve itself into a question of honesty or dishonesty, for guilty knowledge and wilful ignorance alike involve the result of bad faith. They are the same in effect . . ." *Fenner v. American Surety Company of New York, 156 S. W. 2d 279, 282-283*, writ refused want of merit.

The jury had all the facts before it and found that the annexation proceedings were arbitrary, unjust and unreasonable. That is a finding of want of due process of law. In addition to that finding, the fact that the Council tried to "cram down" the people of Flour Bluff an annexation when the petition before it obviously did not meet the require-

ments of the City Charter is conclusive evidence of wilful ignorance and wilful disregard of, and refusal to learn, the facts about the petition when it was available and at hand, which is likewise want of due process of law.

Article 1182a, supra, required the City of Corpus Christi, in attempting to annex the territory which includes a portion of Nueces County Water Control and Improvement District No. 2, to submit the matter of such annexation to the legally qaulified property taxpaying voters within the City of Corpus Christi and also to the legally qualified property taxpaying voters within the area sought to be annexed. An examination of City Ordinance No. 6206 will disclose the fact that the issue to be submitted, as required by *Article 1182a*, supra, was not submitted to the legally qualified property taxpaying voters in the area to be annexed. Had the petition seeking annexation, and the acts of the City Council in accepting and ordering an election on that petition, been in due process of law, it is quite clear that the due process required by the law was not followed by the City Council in calling the election as required by *Article 1182a*, supra.

The conduct of the proponents of annexation and the City Council, together with the pleading of the Appellees sworn to by the City Attorney, describing said area as "having no semblance of urban development and wholly unsuitable for use for strictly town purposes and not intended to be used for strictly town purposes" (Tr. page 8), brings this case with-

in the rule that the 14th Amendment of the Constitution of the United States applies against the plain, palpable, arbitrary, injustice, irreconcilible with the natural and inalienable rights of the citizens in the area involved. This Court, in *Northern Pacific Railway Company et al, vs. Department of Public Works of Washington, et al, 268 U. S. 39, 45 Sup. Ct. 412 at 414*, says:

> "An order based upon a finding made without evidence (The Chicago Junction Case, 264 U. S. 258, 263, 44 S. Ct. 317, 68 L. Ed. 667), or upon a finding made upon evidence which clearly does not support it (Interstate Commerce Commisison v. Union Pacific R. R. Co. 222 U. S. 541, 547, 32 S. Ct. 108, 56 L. Ed 308), is an arbitrary act against which courts afford relief. The error under discussion was of this character. It was a denial of due process. Compare New York & Queens Gas Co. v. McCall, 245, U. S. 345, 348, 38 S. Ct. 122, 62 L. Ed. 337".

The above quotation fits this case like a glove fits a hand.

The pleading in this case sets up a defense grounded on the violation of the 14th Amendment to the Constitution of the United States, which is necessarily a question of Federal law, and this case coming from the State courts presents that question, which this Court must determine for itself. *First National Bank of Guthrie Center v. Anderson, County Auditor, et al, 269 U. S. 341, 46 Sup. Ct. 135, 137.*

The constitutional validity of the city ordinances are directly challenged in this case from the trial court to and in the Supreme Court of Texas. Those Courts sustain the validity of the ordinances invoided; therefore this case is properly here before this Court on appeal. *Kansas Southern Railway Company et al, vs. Road Improvements District No. 3 of Silver County Arkansas, et al, 266 U. S. 379, 45 Sup. Ct. 136, 139.* Every question arising under the Constitution of the United States may, when properly raised in the State court, come ultimately to this Court for decision. *Hague, Mayor, et al, vs. Committee for Industrial Organization, 307 U. S. 496, 59 Sup. Ct. 954,* a case involving the validity of city ordinances.

"It is also well settled that municipal ordinances adopted under State authority constitute State action and are within the prohibition of the Amendment". *Carlson vs. People of the State of California, 310 U. S. 106, 60 Sup. Ct. 746, 747, footnote 1.* A group of cases involving the validity of city ordinances, as tested against the 14th Amendment to the Constitution of the United States, are *Schneider vs. State of New Jersey (Town of Irvington); Young v. People of the State of California; Snyder v. City of Milwaukee; Nichols, et al, v. Commonwealth of Massachusetts, 308 U. S. 147.* The question of violation of the Appellants' constitutional rights was adequately presented and was decided in the State courts, where the validity of the questioned ordinances was sustained, and is itself a "Federal question" as respects the Supreme Court's jurisdiction.

Lovell v. City of Griffin, Georgia, 303 U. S. 444, 58 Sup. Ct. 666, 668.

It appears that the State courts avoided the issue of constitutionality of the ordinances involved though said courts did sustain the validity thereof. The State court may not avoid the issue and deprive the Supreme Court of jurisdiction. *Wolfe vs. the State of North Carolina, 364, U. S. 177, 364 U. S. 856, 80 Sup. Ct. 1482, 81 Sup. Ct. 29.* It is the province of this, the Supreme Court of the United States, to decide the facts upon this constitutional question. *Kern-Lemeric, Inc. v. Scurlock, 347 U. S. 110, 74 Sup. Ct. 403.*

The ordinances in question were passed by the City Council under the authority of the act of the legislature creating the City of Corpus Christi as a municipal corporation, and the amendments to that Charter. Therefore, the acts of the City Council are done under the authority conferred by the State and are embraced by the 14th Amendment to the Constitution of the United States. This Court has jurisdiction of this suit, since the defensive pleadings question the validity of those ordinances as being contrary to said Amendment. *Home Telephone and Telegraph Company v. City of Los Angeles, et al, 277 U. S. 274, 33 Sup. Ct. 312.*

Should it be claimed by the Appellees that the decisions of the State courts rest upon a non-Federal ground, the Federal ground being present, it is encumbent upon this Court to ascertain for itself, in

order that the constitutional guarantees may appropriately be enforced, whether the asserted non-Federal ground independently and adequately supports the judgment. *Abie St. Bank v. Weaver, Governor of Nebraska, et al, 282 U. S. 765, 51 Sup. Ct. 252, 255.* In the Weaver case, this Court says by quotation that where the non-Federal ground is so interwoven with the other as to not be an independent matter, or, is not of sufficient breadth to sustain the judgment without any decision of the other, the Supreme Court's ~~judgment~~ jurisdiction is plain.

The validity of both the Charter provisions for annexation, Article 1, Section 2, and the ordinances passed under that Charter provision under the Federal Constitution have, by the Appellants' amended answer filed in the Trial Court and the points and assignments of error in the appellate courts, drawn in question the decision of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, which is in favor of the validity of those questioned instruments, which clearly establish jurisdiction of this case in this Court. *Chesebro v. Los Angeles County Flood Control District, et al, 306 U. S. 459, 59 Sup. Ct. 622, 624.*

The Appellants submit that it is essential to due process of law that the owners of property within the proposed annexed territory be given notice and an opportunity to be heard on the question of annexation. There has been no legitimate legislative determination that their property will be benefited by the annexation or that the property is suitable

for annexation, or that the petition contained the signatures of ten per cent (10%) of the qualified voters within the area to be annexed, especially since it is undisputed that ten per cent (10%) of those voters would be 98.1 voters, or, would be of necessity 99 voters necessarily signing the petition, since the Charter says that the petition shall be signed by "not less than ten per cent (10%) of the qualified voters residing in the territory proposed to be annexed". *Browning, et al, v. Hooper, et al, 269 U. S. 396, 46 Sup. Ct. 141, 143.*

If the petition and the action of the City Council, up to the calling of the election by Ordinance No. 6206, July 12, 19[illegible], were all legal and in order, the City Council failed and refused to comply with the requirements of *Article 1182a*, supra. That law requires the City of Corpus Christi, in calling such an election, to submit the issue of annexation, assumption of the indebtedness of the Water District, and the levy of a tax on all the property within the City to be voted upon by the voters within the City of Corpus Christi and to be voted upon by the voters within the area to be annexed. That was not done. *Article 1182a*, supra, specifically prevents the annexation of the area involved in this suit, if both the majority of the qualified property taxpaying voters in the City of Corpus Christi and the majority of the taxpaying voters in the area to be annexed do not vote in favor of annexation. If either group vote against annexation, that law says the City shall not annex the territory.

The case of *State ex rel Wilkinson, et al, v. Self, Mayor of Corpus Christi, 191 S. W. 2d 756,* involved two questions, one was whether the City had substantially complied with the *Article 1182a*, in submitting the annexation issue to the voters within the City in one election and to the voters within the Water District in another election. In the case, the Court says:

> "It will be seen that in certain particulars the charter provisions are different from those prescribed by the statute. It is stated in appellees' brief that the procedure followed by the City with reference to the disputed annexation was that prescribed in the charter, except where there was a conflict between the charter and the statute, in which instance the provisions of the statute were followed. This raises the first question involved upon this appeal, namely, *did the adoption of the charter amendment by the City of Corpus Christi supersede and render ineffectual the method of annexation permitted by the Legislative Act of 1929?*
>
> "*We hold that it did not.* The Home Rule Amendment did not deprive the Legislature of the power to provide and enact general laws relating to municipal affairs. In fact, this power was carefully preserved. City of Beaumont v. Fall, 116 Tex. 314, 291 S. W. 202; Dry v. Davidson, Tex. Civ. App. 115 S. W. 2d 689, writ refused. Therefore, the Legislature could lawfully prescribe and authorize a procedure whereby a Home Rule City could annex additional adjacent territory.
>
> "The governing body of a city obviously could not and cannot repeal a valid Act of the

> Legislature. Further, we do not believe such intention can be gathered from the charter provision relating to annexation. Rather, it would be more reasonable to say that the City by its charter provision sought to set out and prescribe a method for annexing adjacent territory in adition to that provided for by the Legislative enactment. . . . We hold that the statutory provisions are in full force and effect and applicable to the annexation of territory here involved. City of Fort Worth v. State ex rel Ridglea Village, Tex. Civ. App. 186. S. W. 2d 323."

When such territory is annexed the property therein shall bear its pro rata part of the taxes levied by the City and the inhabitants thereof are bound by the acts, ordinances, resolutions and regulations of the city, which not only deprives the inhabitants of the area of their property through taxation, but, restricts and restrains their liberties under the police powers of the City. Such obligations are placed on the territory and the inhabitants under Article 1, Section 2, of the City Charter, which is copied hereinbefore in this statement.

The Trial Court, the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, and the Supreme Court of Texas, have denied the existence of Appellants' Federal right and deprived Appellants of the benefit of it. This Court has jurisdiction to review the final judgment entered by the Texas Court depriving appellants of that Federal right. Only by review now in this Court and reversal of the judgment of the Court of Civil Appeals

for the Fourth Supreme Judicial District of Texas can the Appellants' right be effectively recognized and protected. The Appellants pray that this Court retain jurisdiction of this suit and set the case for submission on briefs and oral argument.

Respectfully Submitted,

Sidney P. Chandler

SIDNEY P. CHANDLER
P. O. Box 6216
Corpus Christi, Texas, 78411

Attorney for Appellants.

PROOF OF SERVICE

I, Sidney P. Chandler, the attorney of record for John R. Pennington, et al, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 12th day of November, 1963, I served copies of the foregoing Jurisdictional Statement of Appellants on the Appellees by depositing the same in the United States Postoffice in Corpus Christi, Texas, duly addressed to Honorable I. M. Singer, Esq., City Hall, Corpus Christi, Texas, one of the attorneys of record for the Appelles, with first class postage paid.

Sidney P. Chandler

Sidney P. Chandler
P. O. Box 6216
Corpus Christi, Texas 78411

Attorney for Appellants

APPENDIX

John R. Pennington et al.,
Appellants,

No. 14012, v.

City of Corpus Christi, Texas, et al.,
Appellees.

Appeal from Nueces County.

This suit involves an area of land adjacent to the City of Corpus Christi, Texas, generally known as the Flour Bluff area. More specifically, it involves the question of whether the City of Corpus Christi has a prior right to annex this territory or whether certain citizens have a prior right to incorporate such territory into a municipal corporation.

The City of Crpus Christi on January 4, 1961, received a petition for annexation, describing the Flour Bluff area adjacent to the City, which at the time was not a part of any other incorporated city then in existence or in the process of incorporation. The City Council thereafter determined that this petition was sufficient under the provisions of the City Charter, and called an election in keeping with the petition. An election was duly held and the question of annexation was carried by a majority vote, and the City Council passed an ordinance annexing said territory to the City of Corpus Christi. These proceedings conclusively and legally annexed this territory to the City, unless the appellants herein had a prior right to incorporate it into a municipal corporation by filing with the County Judge of Nueces County, Texas, a petition for an election to incorporate this same territory.

The petition to annex was filed with the City Council on January 4, 1961. Some six months later,

on July 11, 1961, the petition for an election was filed with the County Judge. The following day, July 12, the City Council passed an ordinance finding that the petition was signed by not less than ten per cent of the qualified voters residing in the area proposed to be annexed, that the area was contiguous and adjacent to the existing corporate limits of the City, and ordering an election to be held on August 5, 1961, on the question of annexation.

On July 11, 1961, the same day the petition for incorporation was presented to him, the County Judge ordered an election to be held, also on August 5, 1961, to determine the question of incorporation.

It is apparent that this territory cannot legally be annexed to the City of Corpus Christi and at the same time be incorporated as a new municipal corporation. Thus, the question of priority of rights is here presented.

The trial was to a jury, which found by its answers to questions submitted, (1) that after the filing of said petition on January 4, 1961, the petitioners did not, in good faith, pursue and prosecute said petition in the City Council between said date and July 10, 1961; (2) that between January 4, 1961, and July 10, 1961, the Corpus Christi City Council did not abandon the proposed annexation of the Flour Bluff area; (3) that the description of the territory proposed to be annexed, as contained in the ordinance calling the annexation election in the City of Corpus Christi for August 5, 1961, is not so indefinite and uncertain that it cannot be definitely determined what territory, if any, was intended to be annexed by said election; (4) that the description of the territory proposed to be in-

corporated is not so indefinite and uncertain that it cannot be definitely determined what territory was intended to be incorporated; (5) that the alleged annexation of the Flour Bluff area to Corpus Christi was unreasonable, unjust and arbitrary at the time; (6) that the area contained in the petition for incorporation had on or about July 11, 1961, a population of less than 5,000 inhabitants; (7) that no more territory has been included within the proposed incorporated area than was intended to be used for strictly town purposes.

The trial court disregarded the jury's answers to questions 1, 4, 5 and 7, and rendered judgment non obstante veredicto in favor of appellee City of Corpus Christi upholding the annexation ordinance, from which judgment John R. Pennington prosecuted this appeal.

The controlling question involved here is whether proceedings to annex the Flour Bluff area to the City of Corpus Christi were begun when the petition was filed with the City on January 4, 1961. The petition was regular on its face and purported to have been signed by not less than ten per cent of the qualified voters residing in the territory proposed to be annexed. This petition, when presented to the City Council, was sufficient to commence legal proceedings and assert authority over the Flour Bluff area. The rule in this State is that whoever first commences legal proceedings asserting authority over the territory, acquires jurisdiction over same and this jurisdiction cannot thereafter be defeated by adverse parties who subsequently attempt to exercise jurisdiction. Beyer v. Templeton, 147 Tex. 94, 212 S.W.2d 134.

Appellants contend that the petition was legally insufficient and hence did not confer jurisdiction

upon the City of Corpus Christi over the area in question. We overrule this contention. The City Council, by ordering the election, necessarily found that the petition was legally sufficient, and, in the absence of a showing of want of good faith or an abuse of discretion, this finding is final and binding when called into question in a judicial proceeding. School Bd. of the City of Marshall v. State by Criminal Dist. Atty. ex rel. Warbritton, ... Tex. ....., 343 S.W.2d 247; State ex rel. Wilkinson v. Self, 191 S.W.2d 756. In the very recent case of State v. City of Marshall, 347 S.W.2d 274, writ refused, the Texarkana Court of Civil Appeals, said:

> "The issue eventually decided by the city commission in this case was a political one and no private rights were at stake. Since the petition was regular on its face it was sufficient to invoke the potential jurisdiction of the city commission to determine whether it was signed by the required number of qualified voters."

See, also, State ex rel. Pan Am. Production Co. v. Texas City, 157 Tex. 450, 303 S.W.2d 780.

There is no evidence here and no finding of the jury that the City Council, in calling the election for the annexation of the Flour Bluff area to the City City of Corpus Christi, acted in bad faith.

In view of this holding, the findings of the jury Nos. 1, 4, 5 and 7, are immaterial and were properly disregarded by the trial court.

We have examined other points presented by appellants and find them without merit, therefore, they are overruled.

The judgment is affirmed.

W. O. MURRAY
Chief Justice

Opinion delivered and
filed December 12, 1962

San Antonio, Texas,
October 7, 1963,

I, Robert L. Cook, Clerk of the Court of Civil Appeals in and for the Fourth Supreme Judicial District of Texas, do hereby certify that the foregoing is a true and correct copy of the Opinion of the Court as entered in the minutes in Cause No. 14012, John R. Pennington et al., Appellants vs. City of Corpus Christi, Texas, et al., appealed from the 117th District Court of Nueces County, Texas.

(SEAL) IN TESTIMONY WHEREOF, I hereunto set my hand and seal of said Court at my office in San Antonio, this the same date above written.

Robert L. Cook, Clerk,
By Frankie Lutts
Deputy Clerk

Judgment of The Court of Civil Appeals

Wednesday, December 12, 1962

John R. Pennington et al., Appellants,
No. 14012, vs.
City of Corpus Christi, Texas, Appellee.

Appealed from the 117th District Court
of Nueces County.

This cause came on to be heard on the transcript of the record, and the same being examined, because it is the opinion of the Court that there was no error in the judgment of the Court below, it is therefore considered, adjudged and ordered that said judgment be, and it is hereby, affirmed.

It is further ordered that Appellants, John R. Pennington, Individually and as representative of the petitioners for incorporation, pay all costs of this Court in this behalf expended and incurred, and this decision be certified below for observance.

San Antonio, Texas,
October 10, 1963.

I, Robert L. Cook, Clerk of the Court of Civil Appeals in and for the Fourth Supreme Judicial District of Texas, de hereby certify that the foregoing is a true and correct copy of the Judgment of this Court, as entered in the minutes in Cause No. 14012, John R. Pennington et al., Appellants vs. City of Corpus Christi, Texas, Appellee, appealed from the 117th District Court of Nueces County.

(SEAL) IN TESTIMONY WHEREOF, I hereunto set my hand and seal of said Court at my office in San Antonio, this the same date above written.

Robert L. Cook, Clerk,
By Frankie Lutts
Deputy Clerk

Order of The Court on Motion for Rehearing

Wednesday, January 9, 1963

John R. Pennington et al, Appellants,
No. 14012, vs.
City of Corpus Christi, Texas, et al., Appellees.

Appealed from Bexar County.

The motion of Appellants for Rehearing, filed December 20, 1962, coming on to be heard, it is ordered that said motion be, and it is hereby, overruled; that Appellants, John R. Pennington, Individually, and as representative of the petitioners for incorporation pay all costs of this motion.

San Antonio, Texas,
October 10, 1963.

I, Robert L. Cook, Clerk of the Court of Civil Appeals in and for the Fourth Supreme Judicial District of Texas, do hereby certify that the foregoing is a true and correct copy of the Order of this Court Overruling Motion for Rehearing, as entered in the minutes in Cause No. 14012, styled John R. Pennington et al., Appellants vs. City of Corpus Christi, Texas, Appellee, appealed from the 117th District Court of Corpus Christi, Texas, Nueces County.

(SEAL) IN TESTIMONY WHEREOF, I hereunto set my hand and seal of said Court at my office in San Antonio, Texas, this the same date above written.

Robert L. Cook, Clerk,
By Frankie Lutts
Deputy Clerk

In The SUPREME COURT of Texas

No. A-9453 April 17, 1963

John R. Pennington, et al From Nueces County

vs.

City of Corpus Christi, Texas Fourth District

Application of petitioners for writ of error to the Court of Civil Appeals for the Fourth Supreme Judicial District having been duly considered by the Court, and the Court having determined that same presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that the application be, and hereby is, refused. It is further ordered that the applicant, John R. Pennington, et al (appellants in C.C.A.) pay all costs incurred on this application.

****

No. A-9453 July 10, 1963

John R. Pennington, et al From Nueces County

vs.

City of Corpus Christi, Texas Fourth District

Petitioners' motion for rehearing of application for writ of error having been duly considered by the Court, it is ordered that said motion be, and hereby is, overruled.

****

I, GEO. H. TEMPLIN, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of all orders entered by the Supreme Court of Texas on application for writ of error in the case numbered and styled as above as the same appears of record in the minutes of said Court.

Witness my hand and the seal of the Supreme Court of Texas, at the City of Austin, this, the 15th day of July, 1963.

(SEAL) GEO. H. TEMPLIN, Clerk
By Geo. H. Templin

Art. 1182a. Annexation of additional territory Election

Section 1. Whenever the City Commission of any City within this State, acting under and by virtue of any Charter adopted under Home Rule Amendment Article 11, Section 5, of the Constitution of this State, shall initiate or order an election for the extension of the territorial limits of said city, to be submitted to the legally qualified property tax paying voters residing within the territorial limits of said city, to determine whether or not the adjacent territory desired to be annexed shall be included within the territorial limits of said city, said City Commissioners shall at the same time order an election to be held at some convenient place within said city limits, so that the legally qualified property tax paying voters residing in the territory contiguous to said city and proposed to be annexed, may appear and cast their vote for the purpose of determining whether a majority of the legally qualified property tax paying voters residing in said territory proposed to be annexed, favor the annexation of said territory proposed to be annexed.

Ballots for election

Sec. 2. Whenever an election for the annexation of additional territory is held in accordance with the provisions of the foregoing section, said City Commissioners, when ordering such election for the annexation of said territory, shall prepare for the legally qualified property tax paying voters, printed ballots containing the following propositions to be voted on thereat:

"For annexation of additional territory and assumption by the city of all bonded indebtedness

flat rates owing to such water control and improvement district *on the territory to be annexed* and the levying and collecting of a tax on all property within the city limits sufficient to pay off and discharge said bonded indebtedness and flat rates."

"Against annexation of additional territory and assupmtion by the city of all bonded indebtedness and flat rates owing to such water control and improvement district *on the territory to be annexed* and the levying and collecting of a tax on all property within the city limits sufficient to pay off and discharge said bonded indebtedness and flat rates."

Assumption of indebtedness of annexed territory

Sec. 3. If, at any election to be held under the provisions hereof, a majority of the legally qualified tax paying voters residing within the territorial limits of such city, and *those residing within the territorial limits proposed to be annexed*, shall each vote in favor of the annexation and such additional territory, said city shall thereby assume all of said bonded indebtedness and flat rates on the territory thus annexed and due such Irrigation District, Water Improvement District or Water Control and Improvement District, or either of them, and shall from thence forth out of the taxes collected on the territory thus annexed pay to said Irrigation District, Water Improvement District or Water Control and Improvement District, said bonded indebtedness and flat rates, owing to such district, or either of them, as same become due and payable, and no city thus annexing such territory shall be entitled to collect any taxes due it from the property owners within the territory annexed until said City shall pay such bonded indebtedness and flat rates, for the current year same become due and payable, and

present to said property owner a receipt showing that said City has paid the same.

The order of election must give the metes and bounds of the territory to be annexed, and said metes and bounds shall be include[1] and made a part of the ordinance calling for the election.

The election herein provided for shall be ordered by the City Commissioners and the returns canvassed and the results declared as is provided by law for other elections pertaining to said City.

Said ordinance for the election must provide for separate elections and must be issued and public notice given thereof as in other city elections, and provided further that if a majority of the legally qualified property tax paying voters residing within the territorial limits of said city or if a majority of the legally qualified property tax paying voters residing within the territory desired to be annexed shall not be in favor of such annexations then such annexations shall not be made.

Powers additional to charter provisions

Sec. 4. Provided further, however, that nothing in this Act shall be held or construed to repeal or nullify any charter provision of any city of over one hundred thousand inhabitants according to the last United States census, operating under Article 11, Section 5 of the Constitution *providing for the annexation of additional territory by ordinance*, but shall be construed as an additional power and cumulative of the said charter provisions. Acts 1929, 41st Leg., p. 251, ch. 110.

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[1] Probably should read "included."

(Plaintiffs' Exhibit No. 5)

6206

AN ORDINANCE

ORDERING AN ELECTION TO BE HELD WITHIN THE CITY OF CORPUS CHRISTI, TEXAS, FOR THE PURPOSE OF DETERMINING WHETHER OR NOT THE TERRITORY ADJACENT TO THE CITY OF CORPUS CHRISTI AND DESCRIBED IN THIS ORDINANCE SHALL BE ANNEXED TO THE CITY OF CORPUS CHRISTI; DEFINING THE TERRITORY PROPOSED TO BE ANNEXED; PROVIDING PROCEDURE FOR THE HOLDING OF SUCH ELECTION; PRESCRIBING THE FORM OF NOTICE OF ELECTION; ENACTING PROVISIONS INCIDENT TO AND RELATING TO THE PURPOSE OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, petitions *have been presented to the City Council by more than ten per cent (10%) of the qualified voters residing in the territory hereinafter described proposing the annexation* of said territory to the City of Corpus Christi, and in particular the petition filed of January 4, 1961, by Harry Grim and others; and

WHEREAS, *study of said petition, the conditions which exist in said area proposed to be annexed, the services of the City of Corpus Christi which could be furnished to said area and other matters relating to the proposed annexation of said area has been proceeding from the time of filing of said petition to the time of the adoption of this ordinance; and*

WHEREAS, *This Council, after due investiga-*

tion, has ascertained and determined that said petition is signed by not less than ten percent (10%) of the qualified voters residing in the territory proposed to be annexed and that the territory more specifically described as all of that area contiguous and adjoining present city limits of the City of Corpus Christi, more particularly described as being all of that area extending from the present southeast city limits line which crosses Lexington Boulevard at a point approximately 500 feet east of the intersection of Farm Road 43 and extending along Lexington Boulevard 100 feet on each side of the right of way of said Lexington Boulevard to the eastern side of the Cayo Del Oso and including all of the area north of the King Ranch property line which runs parallel to and approximately one-half mile south of Yorktown Road and being the south boundary line of Sections 38, 51 and 52 of Flour Bluff and Encinal Farm and Garden Tracts; said area to be annexed being bounded on the East by Laguna Madre, on the North by the Southern property line of U. S. Naval Air Station and on the West by the eastern bank of Cayo Del Oso, except for that area also proposed to be annexed extending 100 feet on either side of Lexington Boulevard to the present city limits line of the City of Corpus Christi; and

WHEREAS, *All of said territory is found to be and constitute one body of land adjoining the city limits of the City of Corpus Christi, Texas,* and should be submitted to the voters of the City for annexation; and

WHEREAS, the *Council deems it desirable, and it is the will of the Council* to annex said area to said City of Corpus Christi, if the same be approved by the qualified voters of the City of Corpus Christi:

NOW, THEREFORE, *BE IT ORDAINED* BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. That an election be held on the 5th day of August, 1961, within the City of Corpus Christi and that there be submitted at said election to the qualified voters of said City the question of whether or not certain territory should be annexed to the City of Corpus Christi, Texas, said territory being described generally as hereinabove set forth and more particularly described as follows:

BEGINNING at a point on the present city limits line of the City of Corpus Christi, approximately 500 feet east from the intersection of Lexington Boulevard with Farm Road No. 43 where said city limits line crosses the centerline of the right of way of Lexington Boulevard for the place of beginning;

THENCE along the present city limits line in a southerly or southwesterly direction to a point of 100 feet southwesterly from the southern right of way line of Lexington Boulevard for a corner;

THENCE in an easterly direction parallel to the centerline of Lexington Boulevard at a distance of 100 feet from the south right of way line of Lexington Boulevard to the eastern edge of the Cayo Del Oso;

THENCE in a southerly direction along the meanders of the eastern bank of the Cayo Del Oso to the point on said bank intersected by the southern boundary line of Section 38 of Flour Bluff and Encinal Farm and Garden tracts as shown by map or plat of said Farm and Garden Tracts

on file in the office of the County Clerk of Nueces County, Texas;

THENCE in an easterly direction along the common boundary line between the King Ranch property and Flour Bluff and Encinal Farm and Garden Tracts, said line being the southern boundary line of Sections 38, 51 and 52 of said Flour Bluff and Encinal Farm and Garden Tracts to the point of intersection of the southern boundary line of said Section 52 and the northern boundary of King Ranch property with the western boundary line of Laguna Madre;

THENCE in a northerly direction along the meanders of Laguna Madre in a northerly direction to the point of intersection of the southern boundary line of U. S. Naval Air Station property approximately 1320 feet from the north line of Section 56 of the Flour Bluff and Encinal Farm and Garden Tract for a corner;

THENCE along the southern boundary line of the U. S. Naval Air Station in a westerly and southwesterly direction to a point on the eastern bank of Cayo Del Oso at a point approximately ½ mile north of the southern boundary line of Section 42 of said Flour Bluff and Encinal Farm and Garden Tracts;

THENCE in a southerly direction along the eastern edge of Cayo Del Oso to a point 100 feet north of the right of way line of the northern right of way line of Lexington Boulevard and thence in a westerly direction parallel to the centerline of Lexington Boulevard at a distance of 100 feet from the northern boundary line of the right of way of Lexington Boulevard to a point on the

eastern city limits line of the City of Corpus Christi;

THENCE in a southerly direction along the said eastern city limits line of the City of Corpus Christi to the place of beginning.

SECTION 2. That the official ballot for said election shall be, except for caption and date and other formalities as may be provided by law for the form of said ballot, as hereinafter set out, and the proposition to be voted on at said election shall be as follows:

"PROPOSITION NO. 1

Shall the City of Corpus Christi, by ordinance, annex to said City certain additional territory referred to and described in the ordinance ordering an election passed July 12, 1961, to the City of Corpus Christi and its corporate limits, said territory being generally described as an area extending eastward for a distance of 100 feet on each side of Lexington Boulevard from the present eastern city limits of the City of Corpus Christi to the eastern edge of Cayo Del Oso and including all of the area bounded on the south by the King Ranch property, on the West by the eastern edge of the Cayo Del Oso, on the North by the U. S. Naval Air Station property and on the East by the Laguna Madre."

All voters who favor the annexation of the territory as herein described and as generally provided in Proposition No. 1 shall have written or printed on their ballots the following words:

"PROPOSITION NO. 1

FOR THE ANNEXATION OF SUCH ADDITIONAL TERRITORY REFERRED TO IN THE ORDINANCE ORDERING AN ELECTION PASSED JULY 12, 1961"

and those opposed to the annexation of the territory hereinbefore described in Section 1 hereof and referred to and as generally provided in Proposition No. 1 shall have written or printed on their ballots the following words:

"PROPOSITION NO. 1

AGAINST THE ANNEXATION OF SUCH ADDITIONAL TERRITORY REFERRED TO IN THE ORDINANCE ORDERING AN ELECTION PASSED JULY 12, 1961."

SECTION 3. If at said election a majority of the duly qualified voters who reside within the City of Corpus Christi voting at said election shall vote in favor of the annexation to the City of Corpus Christi of the territory herein described in Section 1 hereof and referred to herein, and as generally provided in Proposition No. 1, the City Council shall, by ordinance, annex and receive such territory as a part of said City, and thereafter such territory so annexed and received shall be a part of the City of Corpus Christi, Texas.

SECTION 4. A copy of this ordinance, signed by the Mayor of the City of Corpus Christi, Texas, shall constitute the notice ordering said election, and the Mayor is directed to cause a copy of this ordinance, signed by him, to be posted at the City Hall in the City of Corpus Christi, Nueces County, Texas, and at each of the polling places in each

precinct of the City, said posting to be not less than fifteen (15) days prior to said election, and to have a copy of this ordinance published in the Corpus Christi Times, the official newspaper of the City of Corpus Christi, Texas, it being a newspaper of general circulation, published within the City of Corpus Christi, said publication to be made in accordance with the requirements of law.

SECTION 5. Said election shall be held in the City of Corpus Christi, Texas, at the following places and the following named persons are hereby named judges and officials at said election:

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
1	1, 2, 21 & 49	Gilleland's Court Room Courthouse	Henry J. Kerber, Judge Floyd M. Willis, Asst. Judge Lea H. Beck, Clerk
2	3, 4, 5, 32 & 33	Chester Heath School 500 N. Carrizo	Miss Gertrude Dreyer, Judge Mrs. Charles J. Jackson Asst. Judge Agnes Koniakovsky, Clerk Mrs. J. J. Cotteral, Clerk
3	30, 38 & 78	Geo. W. Crossley School	Mrs. J. H. Vetters, Judge Mrs. Geo. J. Stein, Asst. Judge Mrs. J. A. Alston, Clerk Mrs. D. E. Cornett, Clerk
4	7 & 8	Oak Park School 3701 Mueller	Mrs. H. A. Tycer, Judge Mrs. W. H. Davis, Asst. Judge Miss Rosalea Ruschhaupt, Clerk H. A. Tycer, Clerk

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
5	51*, 81* & 82	Savage Lane Fire Station 501 Savage Lane	Mrs. R. E. Hobbs, Judge Mrs. H. H. McCool, Asst. Judge Mrs. C. E. Lee, Clerk Mrs. Ed Whelan, Clerk
6	52 & 99	West Heights Baptist Church 642 Scott	Mrs. R. J. Hereford, Judge Mrs. C. M. McKinney, Asst. Judge R. J. Hereford, Clerk Mrs. Eloida Fay Doerr, Clerk
7	47 & 79	Roy Miller High School Foyer, Cafeteria Bldg. Fisher St. Entrance	Mrs. Jack Barfield, Judge Mrs. Pauline Tribble, Asst. Judge Mrs. Travis P. Lowman, Clerk Mrs. W. F. Garrison, Clerk
8	6, 31 & 39	Edward Furman School 1115 S. Alameda	Mrs. F. L. Alexander, Judge Mrs. L. D. Davis, Asst. Judge Marjorie Paul, Clerk

*That portion lying within the city limits.

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
9	45, 46 & 48	Geo. Wiggin's Homes Recreation Center 2320 Buford	Mrs. E. M. Jimenez, Judge Mrs. Philip E. Tanis, Asst. Judge E. M. Jimenez, Clerk Jack Mayfield, Clerk
10	44 & 76	De Zavala School 925 Francesca	Minnie B. O'Connell, Judge Mrs. Cleo Fulton, Asst. Judge Mrs. Lon J. Holland, Clerk Mrs. Etta Goforth, Clerk
11	24* & 60	Stephen F. Austin School 3902 Morgan	James B. Fulton, Judge Mrs. Lilia V. Alvarez, Asst. Judge Mrs. Louella Hrchek, Clerk Mrs. Leonor Martinez, Clerk
12	61 & 77	Geo. W. Carver School 3109 Carver	George Elizondo, Judge Mrs. Ophelia Wilburn, Asst. Judge Mrs. George M. Chatman, Clerk Mrs. O. P. Aleman, Clerk

*That portion lying within the city limits.

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
13	75	David Crockett School 2625 Belton	Rose Gonzales, Judge Mrs. Joe Medina, Asst. Judge Mrs. Lydia M. Trujillo, Clerk Mrs. Jose A. Garza, Clerk Sabas B. Gonzales, Clerk
14	43 & 83	Wm. B. Travis School 1645 Tarlton	Louis Aderholt, Judge Mrs. Louis Aderholt, Asst. Judge Mrs. F. J. Floyd, Clerk Mrs. Arnold A. Parrett, Clerk
15	41, 85 & 88	Elizabeth St. School 2002 Elizabeth	Mrs. Dora Sanchez, Judge Amelia Garza, Asst. Judge Mrs. Noe C. Garza, Clerk Raul Delgado, Clerk
16	40, 58 & 62	M. Menger School 2209 S. Alameda	Mrs. E. G. Weldon, Judge Nettie B. Brown, Asst. Judge Mrs. Maureen Moore, Clerk Mrs. James Durham, Clerk
17	42, 59 & 86	Incarnate Word Academy Cafeteria—2930 S. Alameda Breezeway Entrance	Dolly Carroll, Judge Ruth B. Gill, Asst. Judge Mary H. Dunlap, Clerk W. Dunlap, Clerk

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
18	50 & 67	Lindale Recreation Center 3133 Swantner	Mrs. Edwin L. Olsen, Judge Mrs. Arthur C. Roach, Asst. Judge Mrs. E. P. O'Neal, Clerk Mrs. C. E. Beardsley, Clerk
19	56 & 57	Del Mar College Gymnasium Baldwin Boulevard Entrance	Mrs. P. A. Tom, Judge Mrs. M. H. Davis, Asst. Judge P. A. Tom, Clerk Mrs. H. T. Cunningham, Clerk
20	53 & 68	Sam Houston School 363 Norton	W. W. Adcock, Jr., Judge Mrs. Catherine Cassidy, Asst. Judge A. C. Wiggins, Clerk Mrs. Margaret Adcock, Clerk
21	69 & 96	Baker Jr. High School 3445 Pecan	Mrs. E. R. Whitmire, Judge Mrs. Wade Carruth, Jr., Asst. Judge Mrs. Ruth Scarlett, Clerk Mrs. Edna Stanley, Clerk

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
22	74	Cunningham Jr. High School 4321 Prescott	Mrs. W. T. Newton, Judge W. T. Newton, Asst. Judge Marcella Ruiz, Clerk Reynaldo Perez, Clerk
23	98	Prescott Elementary School 1945 Gollihar	Rev. Marion L. Lewis, Judge Lola Lane, Asst. Judge Ada G. Burford, Clerk Tito M. Diaz, Clerk
24	73 & 97	Jas. W. Fannin School 2730 Gollihar	Mrs. Garland M. Bluhm, Judge Mrs. Johnsie Kirkland, Asst. Judge Mrs. Beatrice Dumont, Clerk Mrs. Evelyn Schmidt, Clerk
25	20* & 71	Lexington School 2901 McArdle	H. T. Ingram, Judge Barbara J. Jones, Asst. Judge Mrs. Ben L. Blomb, Clerk Frances Kaspar, Clerk

*That portion lying within the city limits.

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
26	72 & 95	Central Park School 3602 McArdle	Mrs. W. P. Livingston, Judge Mrs. Albert Mosmeyer, Asst. Judge Mrs. Elma Pinn, Clerk W. P. Livingston, Clerk
27	66	R. B. Fisher School 601 Minnesota	G. R. Gilpin, Judge T. D. Bowen, Asst. Judge Mrs. Virgina Spoor, Clerk Mrs. Norma York, Clerk
28	63	Scout Hut Parkway Presbyterian Church 3707 Santa Fe	Agnes H. Gregory, Judge Mark J. Gregory, Asst. Judge Thurston Lambright, Clerk
29	64	Garage 338 Wilshire	Mrs. V. E. Whitstine, Judge Charlene Whitstine, Asst. Judge V. E. Whitstine, Clerk Ed Richard, Clerk

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
30	93	Robert T. Wilson Elementary School—3925 Ft. Worth	Eula Jo Godeke, Judge Catherine M. Cox, Asst. Judge R. H. Godeke, Clerk Mrs. C. W. Cage, Clerk
31	87	Carroll Lane School 4120 Carroll Lane	Drew W. Harrison, Judge Howard Walker, Asst. Judge Barbara Van Dresar, Clerk Virginia Love, Clerk
32	94	Parkdale Elementary School 4801 Everhart	Mrs. Norman H. Bartline, Judge Mrs. Wm. P. Smith, Asst. Judge Mrs. W. N. Norton, Jr., Clerk Walter G. Jauer, Clerk
33	70*, 84 & 89	Faith Assembly of God Church 4425 S. Staples	P. B. Snyder, Judge Johnyrea L. Fite, Asst. Judge Betty Snyder, Clerk Jean Herring, Clerk

*That portion lying within the city limits.

City Prec. No.	Co. Prec. No.	Location of Polls	Judges, Assistant Judges & Clerks
34	65*	Montclair Elementary School 5241 Kentner	Harry L. Hoag, Judge Mrs. L. R. Thomas, Asst. Judge Mrs. Grace Cline, Clerk Mrs. G. E. Mulle, Clerk
35	92	Windsor Park School 4525 S. Alameda	Glen C. Le Bleu, Judge Mrs. M. L. Braybeal, Asst. Judge Mrs. A. L. Gilbert, Clerk Mrs. Marie Macy, Clerk
36	17*, 90 & 91	Fraser Elementary School Airline & McArdle Roads	R. L. Wiswell, Judge Ben F. Wood, Jr., Asst. Judge Mrs. Felix Irwin, Clerk Marie W. Fountaine, Clerk
37	80	Molina Jr. High School 1115 Bloomington	Mrs. Eloisa Gutierrez, Judge Mrs. E. M. Brown, Asst. Judge Mercedes Trevino, Clerk Berta Sais, Clerk

*That portion lying within the city limits.

The presiding judges shall be authorized to select such clerks or other assistants provided by law, as may be deemed necessary and said election shall be held in accordance with the provisions of law relating to elections for the submission of amendments to municipal charters and the general laws of the State of Texas shall be observed insofar as they are applicable. The polls shall be open from 7 o'clock A.M. to 7 o'clock P.M. on date of the said election.

SECTION 6. That voting machines shall be employed at the election herein ordered in accordance with the provisions of Revised Civil Statutes of Texas Election Code, Article 7.14, and said election shall be held at the polling places in the regularly prescribed voting precincts of the City of Corpus Christi.

Absentee voting shall be conducted by the City Secretary at his office in the City Hall and the results canvassed and returns made as is provided by law. A special canvass board is hereby appointed as follows:

Edna Meador, Presiding Judge
Doris Francis, Assistant Judge
Wanda Dipple, Clerk

SECTION 7. That said election shall be held in accordance with the general election laws of the State of Texas.

SECTION. 8 *The fact that a petition for annexation to the City of Corpus Christi by the voters of the territory described in the above ordinance has been on file with the City since January 4, 1961*, and *that it has been determined that an election should be called submitting the question of annexation of said territory to the voters creates a public emer-*

gency and an imperative public necessity requiring the suspension of the Charter rule that no ordinance or resolution shall be passed finally on the date it is introduced and that such ordinance or resolution shall be read at three several meetings of the City Council, and the Mayor, having declared such emergency and imperative public necessity to exist, and having requested that such Charter rule be suspended and that this ordinance be passed finally on the date of its introduction and take effect and be in full force and effect from and after its passage. IT IS ACCORDINGLY SO ORDAINED.

PASSED AND APPROVED, this the 12th day of July, 1961.

ATTEST:

.....

MAYOR
THE CITY OF CORPUS CHRISTI, TEXAS

.....

City Secretary

APPROVED AS TO LEGAL FORM
THIS 12TH DAY OF JULY, 1961:

J. M. Singer, City Attorney

Corpus Christi, Texas
12 day of July, 1961

TO THE MEMBERS OF THE CITY COUNCIL
Corpus Christi, Texas

For the reasons set forth in the emergency clause of the foregoing ordinance, a public emergency and imperative necessity exist for the suspension of the

Charter rule or requirement that no ordinance or resolution shall be passed finally on the date it is introduced, and that such ordinance or resolution shall be read at three meetings of the City Council; I, therefore, hereby request that you suspend said Charter rule or requirement and pass this ordinance finally on the date it is introduced, or at the present meeting of the City Council.

Respectfully,
BEN F. McDONALD
MAYOR

The Charter rule was suspended by the following vote:

Ben F. McDonald, Aye
Tom R. Swantner, Absent
Dr. James L. Barnard, Aye
Joee R. DeLeon, Aye
M. P. Maldonado, Absent
W. J. Roberts, Absent
James H. Young, Aye

The above ordinance was passed by the following vote:

Ben F. McDonald, Aye
Tom R. Swantner, Absent
Dr. James L. Barnard, Aye
Jose R. DeLeon, Aye
M. P. Maldonado, Absent
W. J. Roberts, Absent
James H. Young, Aye

(Plaintiffs Exhibit No. 7)

AN ORDINANCE NO. 6242

BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS, RECEIVING INTO AND ANNEXING TO THE CITY OF CORPUS CHRISTI, TEXAS, CERTAIN ADDITIONAL TERRITORY, SOMETIMES REFERRED TO AS THE "FLOUR BLUFF" AREA, FULLY DESCRIBING SAID TERRITORY AS AN INTEGRAL PART OF THE CITY OF CORPUS CHRISTI, TEXAS, AND DEFINING ITS LIMITS; AND DECLARING SAME AS ANNEXED TO AND MADE A PART OF THE CITY OF CORPUS CHRISTI, TEXAS; AND DECLARING AN EMERGENCY.

WHEREAS, on the *4th* day of January, 1961, *there was presented* to the City Council of the City of Corpus Christi, Texas, *a petition* from the resident voters of an area adjacent to the City, *which petitioned the City Council that certain additional territory should be annexed to* the City of Corpus Christi; *that such petition contained the full and accurate description of two separate tracts of land;* and

WHEREAS, the City Council, *after due investigation and consideration of said petition*, and in compliance with Section 2 of Article 1 of the Charter of the City of Corpus Christi, as amended, did on the 12th day of July, by Ordinance No. 6206, order that an election be held on the 5th day of August, 1961, within the City limits of the City of Corpus Christi for the purpose of submitting to the qualified voters of said City the question of whether or not said territory, as described in said ordinance, being Ordinance No. 6206, be annexed to the City

of Corpus Christi, and the territory to be voted was fully and completely described in said ordinance; and

WHEREAS, an election was held on the 5th day of August, 1961, in accordance with the provisions of said ordinance and in accordance with the ordinances and Charter of the City of Corpus Christi and in accordance with the statutes of the State of Texas regarding such elections, and the question of such annexation of said additional territory was submitted to the qualified voters of the City by two propositions, as follows:

PROPOSITION NO. 1

"SHALL THE CITY OF CORPUS CHRISTI, BY ORDINANCE, ANNEX TO SAID CITY CERTAIN ADDITIONAL TERRITORY REFERRED TO AND DESCRIBED IN THE ORDINANCE ORDERING AN ELECTION PASSED JULY 12, 1961, TO THE CITY OF CORPUS CHRISTI AND ITS CORPORATE LIMITS, SAID TERRITORY BEING GENERALLY DESCRIBED AS AN AREA EXTENDING EASTWARD FOR A DISTANCE OF 100 FEET ON EACH SIDE OF LEXINGTON BOULEVARD FROM THE PRESENT EASTERN CITY LIMITS OF THE CITY OF CORPUS CHRISTI TO THE EASTERN EDGE OF CAYO DEL OSO AND INCLUDING ALL OF THE AREA BOUNDED ON THE SOUTH BY THE KING RANCH PROPERTY, ON THE WEST BY THE EASTERN EDGE OF THE U. S. NAVAL AIR STATION PROPERTY AND CAYO DEL OSO, ON THE NORTH BY THE ON THE EAST BY THE LAGUNA MADRE."

which said area to be annexed was fully described following said presentations of such propositions in the ordinance submitting the question of annexation of said additional territory to the voters; and the returns of said election were duly made to this Council; and

WHEREAS, on the 5th day of August, 1961, at a Special meeting of the City Council of the City of Corpus Christi came on said matter of canvassing said returns of said election, and at said meeting it was found and determined that there were cast at said election 4177 votes on said Proposition No. 1 as follows:

"FOR THE ANNEXATION OF SUCH ADDITIONAL TERRITO- DINANCE ORDERING AN ELEC- TION PASSED JULY 12TH, 1961,"	2477 votes
AGAINST THE ANNEXATION OF SUCH ADDITIONAL TERRI- TORY REFERRED TO IN THE ELECTION PASSED JULY 12TH, ORDINANCE ORDERING AN 1961,	1700 votes

and the City Council thereupon declared the results of said election to be that a majority of the legally qualified voters of the City of Corpus Christi voted in favor of annexation to the City of Corpus Christi the territory as hereinabove described and as will be hereinafter fully described by metes and bounds; and

Whereas, in order to comply with Section 2 of Article 1 of the Charter of the City of Corpus

Christi, Texas, as amended, it is necessary after the election has been completed and the vote is favorable for annexation that the City Council shall, by ordinance, annex the area voted upon; and

WHEREAS, the City Council *deems io to be to the best interest of the City of Corpus Christi, Texas, that said territory, as hereinbefore listed and described. which the voters* of the City of Corpus Christi have by a majority vote declared should be annexed to the City, *be annexed to and received into and included within the territorial limits of said City to become an integral part thereof, and subject to the rules,* regulations, ordinances and the Charter of said City as well as becoming charged with the burden of said City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. That the territory hereinafter defined and described by metes and bounds as follows:

BEGINNING at a point on the present city limits line of the City of Corpus Christi, approximately 500 feet east from the intersection of Lexington Boulevard with Farm Road No. 43 where said city limits line crosses the centerline of the right of way of Lexington Boulevard for the place of beginning;

THENCE along the present city limits in a southerly or southwesterly direction to a point of 100 feet southwesterly from the southern right of way line of Lexington Boulevard for a corner;

THENCE in an Easterly direction parallel to the centerline of Lexington Boulevard at a distance

of 100 feet from the south right of way line of Lexington Boulevard to the eastern edge of the Cayo Del Oso;

THENCE in a southerly direction along the meanders of the eastern bank of the Cayo Del Oso to the point on said bank intersected by the southern boundary line of Section 38 of Flour Bluff and Encinal Farm and Garden Tracts as shown by map or plat of said Farm and Garden Tracts on file in the office of the County Clerk of Nueces County, Texas;

THENCE in an easterly direction along the common boundary line between the King Ranch property and Flour Bluff and Encinal Farm and Garden Tracts, said line being the southern boundary line of Sections 38, 51 and 52 of said Flour Bluff and Encinal Farm and Garden Tracts to the point of intersection of the southern boundary line of said Section 52 and the northern boundary of King Ranch property with the western boundary line of Laguna Madre;

THENCE in a northerly direction along the meanders of Laguna Madre in a northerly direction to the point of intersection of the southern boundary line of U. S. Naval Air Station property approximately 1320 feet from the north line of Section 56 of the Flour Bluff and Encinal Farm and Garden Tract for a corner;

THENCE along the southern boundary line of the U. S. Naval Air Station in a westerly and southwesterly direction to a point on the eastern bank of Cayo Del Oso at a point approximately ½ mile north of the southern boundary line of Section 42 of said Flour Bluff and Encinal Farm and Garden Tracts;

THENCE in a southerly direction along the eastern edge of Cayo Del Oso to a point 100 feet north of the right of way line of the northern right of way line of Lexington Boulevard and thence in a westerly direction parallel to the centerline of Lexington Boulevard at a distance of 100 feet from the northern boundary line of the right of way of Lexington Boulevard to a point on the eastern city limits line of the City of Corpus Christi;

THENCE in a southerly direction along the said eastern city limits line of the City of Corpus Christi to the place of beginning.

be and the same is annexed to the City of Corpus Christi, Texas, and is received into said City, and is included within the territorial limits of said City as an integral part thereof, and that said territory shall hereinafter be a part of the City of Corpus Christi, Texas, and shall be subject to the general laws of the State of Texas, the City Charter of said City and the ordinances, resolutions and laws of the City of Corpus Christi, Texas, to all intents and purposes as the present City of Corpus Christi, and subject to all the same rights, privileges and burdens thereof.

SECTION 2. The fact that such election has been held and the votes counted and canvassed and the results of the election declared in favor of annexation of such territory, to said City, and it is important to the residents of such territory that annexation of such territory be immediately completed, creates a public emergency and an imperative public necessity requiring the suspension of the Charter rule that no ordinance or resolution shall be passed finally on the date it is introduced and

that such ordinance or resolution shall be read at three several meetings of the City Council, and the Mayor, having declared such emergency and necessity to exist, having requested that such Charter rule be suspended, and that this ordinance be passed finally on the date of its introduction and take effect and be in full force and effect from and after its passage, IT IS ACCORDINGLY SO ORDAINED.

PASSED AND APPROVED this the 5th day of August, 1961.

/s/ Ben F. McDonald
MAYOR
THE CITY OF CORPUS CHRISTI

ATTEST:

s/ T. Ray Kring
City Secretary

APPROVED AS TO LEGAL FORM
THIS 15TH DAY OF AUGUST, 1961:

/s/ I. M. Singer
City Attorney

Corpus Christi, Texas
5th day of Aug., 1961

TO THE MEMBERS OF THE CITY COUNCIL
Corpus Christi, Texas

For the reasons set forth in the emergency clause of the foregoing ordinance, a public emergency and imperative necessity exist for the suspension of the Charter rule or requirement that no ordinance or resolution shall be passed finally on the date it is introduced, and that such ordinance or resolution shall be passed finally on the date it is introduced,

and that such ordinance or resolution shall be read at three meetings of the City Council; I, therefore, hereby request that you suspend said Charter rule or requirement and pass this ordinance finally on the date it is introduced, or at the present meeting of the City Council.

Respectfully,

/s/ Ben F. McDonald
MAYOR
THE CITY OF CORPUS CHRISTI, TEXAS

The Charter Rule was suspended by the following vote:

Ben F. McDonald, Aye
Tom R. Swantner, Absent
Dr. James L. Barnard, Aye
Jose R. DeLeon, Aye
M. P. Maldonado, Absent
W. J. Roberts, Aye
James H. Young, Aye

The above ordinance was passed by the following vote:

Ben F. McDonald, Aye
Tom R. Swantner, Absent
Dr. James L. Barnard, Aye
M. P. Maldonado, Absent
Jose R. DeLeon, Aye
W. J. Roberts, Aye
James H. Young, Aye

CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF NUECES)

I, the undersigned, City Secretary of the City of Corpus Christi, Texas, do certify that the foregoing

is a true and correct copy of Ordinance No. 6242, passed and approved by the City Council during the Special Meeting held on the 5th day of August, 1961, as same appears in the official records of the City of Corpus Christi, Texas, of which records I am the lawful custodian.

WITNESSETH My Hand and the Official Seal of the City of Corpus Christi, Texas, this 7th day of August, A.D., 1961.

T. RAY KRING, City Secretary
City of Corpus Christi, Texas

(SEAL)

No. 14012

IN THE COURT OF CIVIL APPEALS

FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS SITTING AT SAN ANTONIO

JOHN R. PENNINGTON, JIM COFFMAN, TOM C. WITHERSPOON, M. M. BUCHANAN, J. O. NICHOLSON, JR., C. A. STANLEY, R. B. WHITTEN, E. J. WRANOSKY, JOE W. NEEL, AUBREY F. SHOOK, CHARLES W. RADER, F. H. ROSCHER and CALVIN RAMFIELD,

Appellants

vs.

CITY OF CORPUS CHRISTI, HARRY A. GRIM, JACK EDWARD and J. S. RAY,

Appellees

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Filed in the Court of Civil Appeals at San Antonio, Texas, Sep. 19, 1963.

Robert L. Cook, Clerk

I.

Notice is hereby given that JOHN R. PENNINGTON, JIM COFFMAN, TOM C. WITHERSPOON, M. M. BUCHANAN, J. O. NICHOLSON, JR., C. A. STANLEY, R. B. WHITTEN, E. J. WRANOSKY, JOE W. NEEL, AUBREY F. SHOOK, CHARLES W. RADER, F. H. ROSCHER and CALVIN RAMFIELD, the Appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas sitting at San Antonio, Texas, affirming the judgment of the District Court of Nueces County, Texas, 117th Judicial District, entered in this suit on the 12th day of December, 1962, which judgment became final on the 10th day of July, 1963, the date the Supreme Court of Texas overruled Appellants' motion for rehearing on Appellants' petition for writ of error to the Supreme Court of Texas.

This appeal is taken pursuant to 28 U. S., Code Annotated, Section 1257 (2).

II.

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following original instruments:

A. The transcript from the District Court of Nueces County, Texas containing 108 pages, and filed in the Court of Civil Appeals at San Antonio, Texas the 19th day of April, 1962;

B. The statement of facts consisting of two volumes, volume 1 containing pages 1-136 and volume 2 containing pages 137-275, and filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

C. Plaintiffs' exhibit number 1,—City Charter of the City of Corpus Christi, Texas, filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

D. Plaintiffs' exhibit 1-A,—an ordinance #6218 passed by the Corpus Christi City Council July 19, 1961, filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

E. Plaintiffs' exhibit number 2,—an ordinance #3911, passed by the Corpus Christi City Council October 27, 1954, and filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

F. Plaintiffs' exhibit number 3,—a petition to the City of Corpus Christi filed with the City Council January 4, 1961, and filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

G. Plaintiffs' exhibit number 4,—minutes of the City Council meeting, Corpus Christi, Texas, January 4, 1961, filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

H. Plaintiffs' Exhibit number 5,—an ordinance #6206, passed by the Corpus Christi City Council

July 12, 1961, and filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

I. Plaintiffs' exhibit number 6,—an ordinance #6241, passed by the Corpus Christi City Council August 5, 1961, and filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

J. Plaintiffs' exhibit number 1,—an ordinance #6242, passed by the Corpus Christi City Council August 5, 1961, and filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

K. Defendants' exhibit number 14,—certified list of voters in election precinct number 18, Nueces County, Texas, for the year beginning February 1, 1960 and ending January 31, 1961, and filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

L. Defendants' exhibit number 15,—certified list of voters in election precinct number 18, Nueces County, Texas, for the year beginning February 1, 1961 and ending January 31, 1962, filed in the Court of Civil Appeals at San Antonio, Texas May 14, 1962;

M. One copy of the brief for Appellants, filed in the Court of Civil Appeals at San Antonio, Texas June 19, 1962;

N. One copy of brief for Appellees, filed in the Court of Civil Appeals at San Antonio, Texas July 16, 1962;

O. One copy of Appellants' supplemental brief, filed in the Court of Civil Appeals at San Antonio, Texas November 7, 1962;

P. One certified copy of the original judgment of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas entered December 12, 1962;

Q. One copy of the opinion of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas delivered December 12, 1962;

R. One copy of Appellants' motion for rehearing, filed in the Court of Civil Appeals at San Antonio, Texas December 20, 1962;

S. One certified copy of the order of the Court of Civil Appeals at San Antonio, Texas overruling Appellants' motion for rehearing;

T. One copy of Appellants' motion to stay issue of mandate and maintain status quo, filed in the Court of Civil Appeals at San Antonio, Texas on or about the 15th day of July, 1963;

U. One certified copy of order of Court of Civil Appeals granting Appellants' motion to stay issue of mandate and maintain status quo, and entered on or about July 31, 1963;

V. Appellants' bond for appeal to the Supreme Court of the United States, filed in the Court of Civil Appeals at San Antonio, Texas August 7, 1963;

W. This notice of appeal.

III.

The following questions are presented by this appeal:

1. Was the arbitrary, unreasonable and unjust act of the City of Corpus Christi, in the attempted annexation of the Flour Bluff area, in violation of the 14th Amendment to the Constitution of the United States, providing that no state shall deprive any person of life, liberty or property without due process of law?

2. Was the failure and refusal of the City of Corpus Christi to comply with the charter of Corpus Christi and the laws of Texas, on annexing territory in the attempted annexation of the Flour Bluff area, in violation of the 14th Amendment to the Constitution of the United States, providing that no state shall deprive any person of life, liberty or property without due process of law?

3. Are the ordinances annexing the Flour Bluff territory to the City of Corpus Christi solely for taxing purposes at the time when the City of Corpus Christi was incapable of furnishing any city benefits to the territory annexed, and at the time said area was incapable of being used for city purposes, in violation of the 14th Amendment to the Constitution of the United States, saying that no state shall deprive any person of life, liberty or property without due process of law?

SIDNEY P. CHANDLER

Attorney for John R. Pennington et al, Appellants

P. O. Box 6216
Corpus Christi, Texas

PROOF OF SERVICE

I, Sidney P. Chandler, attorney of record for JOHN R. PENNINGTON, JIM COFFMAN, TOM C. WITHERSPOON, M. M. BUCHANAN, J. O. NICHOLSON, JR.,

C. A. STANLEY, R. B. WHITTEN, E. J. WRANOSKY, JOE W. NEEL, AUBREY F. SHOOK, CHARLES W. RADER, F. H. ROSCHER and CALVIN RAMFIELD, Appellants herein, depose and say:

That on the 18th day of September, 1963 I served a copy of the foregoing notice of appeal to the Supreme Court of the United States on the City of Corpus Christi, Harry A. Grim, Jack Edward and J. S. Ray, Appellees herein, by delivering the same to a receptionist in the office of I. M. Singer, Esq., City attorney for the City of Corpus Christi, counsel of record for the said HARRY A. GRIM, JACK EDWARD and J. S RAY, and CITY OF CORPUS CHRISTI, located at the City Attorney's office, City Hall, Corpus Christi, Texas.

SIDNEY P. CHANDLER

SUBSCRIBED AND SWORN TO BEFORE ME at Corpus Christi, Texas, this the 18th day of September, 1963.

(SEAL)

BENITA LOLLAR
Notary Public, Nueces County, Texas

San Antonio, Texas,
October 7, 1963.

I, Robert L. Cook, Clerk of the Court of Civil Appeals in and for the Fourth Supreme Judicial District of Texas, do hereby certify that the foregoing is a true and correct copy of the Notice of Appeal to the Supreme Court of the United States, filed in Cause No. 14012, styled John R. Pennington et al., Appellants vs. City of Corpus Christi, Texas, appealed from the 117th District Court of Corpus Christi, Texas, Nueces County.

(SEAL) IN TESTIMONY WHEREOF, I hereunto set my hand and seal of said Court

at my office in San Antonio, Texas, this the same date above written.

Robert L. Cook, Clerk
By Frankie Lutts
Deputy Clerk

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 621

JOHN R. PENNINGTON, ET AL,
Appellants,

vs.

CITY OF CORPUS CHRISTI, ET AL,
Appellees.

On Appeal From the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting at San Antonio, Texas

APPELLEES' MOTION TO DISMISS

I. M. SINGER, City Attorney
City of Corpus Christi
City Hall
Corpus Christi, Texas
ATTORNEY FOR APPELLEES

JAMES P. RYAN
Corpus Christi, Texas
Of Counsel

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 621

JOHN R. PENNINGTON, ET AL,
Appellants,

vs.

CITY OF CORPUS CHRISTI, ET AL,
Appellees.

On Appeal From the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting at San Antonio, Texas

---

APPELLEES' MOTION TO DISMISS

NOW COME City of Corpus Christi, Texas, a municipal corporation, Harry A. Grim, Jack Edwards and J. S. Ray, as residents, qualified voters and property taxpayers within the area attempted to be incorporated as a separate town, Appellees, and pursuant to Rule 16 of the Rules of this Court, move to dismiss the appeal in the above styled and numbered case on the following grounds:

a) Because this appeal, not having been taken in conformity with Section 1257 (2), Title 28,

U.S.C.A., the same is not within the jurisdiction of this Court.

b) Because this appeal, not having been taken in conformity with Rule 15(d) of this Court, the same is not within the jurisdiction of this Court.

c) Because the questions now being urged before this Court were not timely raised below.

d) Because the questions now being urged before this Court were not properly raised below.

e) Because the constitutionality of Ordinance No. 6206 was not expressly passed upon by the Courts below.

f) Because the constitutionality of Ordinance 6242 was not expressly passed upon by the Courts below.

g) Because this case does not present a substantial federal question.

h) Because the Judgment in this case rests on an adequate non-federal basis.

WHEREFORE, PREMISES CONSIDERED, Appellees pray that this appeal be in all things dismissed and that Appellees be awarded their costs, and for such other and further relief as is proper.

I. M. Singer

I. M. Singer, City Attorney
City of Corpus Christi
City Hall
Corpus Christi, Texas

ATTORNEY FOR APPELLEES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 621

JOHN R. PENNINGTON, ET AL,
Appellants,

vs.

CITY OF CORPUS CHRISTI, ET AL,
Appellees.

On Appeal From the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting at San Antonio, Texas

BRIEF IN SUPPORT OF ATTACHED, PRECEDING MOTION OF APPELLEES TO DISMISS

NOW COME City of Corpus Christi, Texas, a municipal corporation, Harry A. Grim, Jack Edwards and J. S. Ray, as residents, qualified voters and property Taxpayers within the area attempted to be incorporated as a separate town, Appellees, and submit this their Brief, pursuant to Rules 16, 35 and 39 of this Court, in support of the attached, preceding Motion to Dismiss.

Statement of the Case

This case involves a Declaratory Judgment rendered by the 117th District Court of Nueces County, Texas, on February 15, 1962. In such trial, Appellees were Plaintiffs and Appellants were Defendants. The Judgment of the Trial Court declared that certain annexation proceedings involving territory adjacent to Appellee City were valid and that proceedings brought by Appellants and others to incorporate a certain portion of the same territory as a separate town were invalid. Upon appeal to the Fourth Court of Civil Appeals of Texas by Appellants, Judgment, accompanied by a written opinion, was handed down affirming the Judgment of the Trial Court. Application for Writ of Error was made to the Supreme Court of Texas by Appellants, and that Court, without written opinion, denied such Application. This appeal, therefore, is brought from the final Judgment of the Court of Civil Appeals.

The annexation in question was decided by the qualified voters of the Appellee City after an election was called by the City Council. The majority of such voters having voted in favor of annexation, the City Council of Appellee City followed the mandatory provisions of its Charter,[1] by passing an ordinance annexing such territory to the Appellee City.[2]

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[1] Section 2(a), Article 1 of City Charter, on page 5 of Jurisdictional Statement.

[2] Ordinance No. 6242, on pages 62-70 of Jurisdictional Statement.

The Texas Constitution, in Article XI, Section 5 (the so-called Home Rule Amendment), confers on cities of over 5,000 inhabitants the power to adopt or amend their charters subject to such limitation as may be prescribed by the Texas Legislature. Article 1175-2 of the Revised Civil Statutes of Texas, recognizing the power of such cities to provide in their charters the rules for annexing additional territory lying adjacent to such cities.

The City of Corpus Christi, Texas, is a home rule city whose Charter reserves to the qualified voters the right to decide upon all major annexations.

> "Such question of annexation of any given territory may be submitted to the qualified voters of the City at any time upon the majority vote of the members of the Council. The question of annexation of any given territory may come before the Council for consideration upon either (1) the will of the Council, or (2) the written recommendation of the Zoning and Planning Commission of the City, or (3) petition signed by not less than 1,500 qualified voters of the City, or (4) petition signed by not less than 10% of the qualified voters residing in the territory proposed to be annexed."[1]

The annexation election in question was called by the Council in response to a petition signed by 10% of the qualified voters residing in the territory proposed to be annexed. The Appellants have contended that the petition was legally insufficient and

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[1] Page 5, Jurisdictional Statement. (City Charter Article 1, Section 2 (a))

hence did not completely confer jurisdiction upon the Appellee City of the territory in question. The Court of Civil Appeals held that the City Council, by ordering the election, necessarily found that the petition was legally sufficient, and in the absence of a showing of want of good faith or an abuse of discretion, that this finding is final and binding when called into question in a judicial proceeding. Further, that Court held that there was no evidence and no finding of the jury that the City Council, in calling the election for the annexation of the Flour Bluff area to the City, acted in bad faith. Basing upon this reasoning, the Court of Civil Appeals held that such petition, when presented to the City Council, was sufficient to commence legal proceedings and to preempt jurisdiction of the territory in question.

As Appellants in this case were attempting to incorporate a general law city after the petition for annexation had been filed with the City Council on January 4, 1961, Appellee City brought this suit for Declaratory Judgment to remove any doubt concerning the validity of its annexation proceedings.

I. Appellants Have Failed to Comply With Section 1257 (2) of Title 28, U.S.C.A., or With Rule 15(d) of This Court. (Germane to Grounds for Dismissal A and B).

At the outset, we charge that this appeal has been frivolously brought. Appellants' so-called "federal questions" are so weak and their position

is so indefensible as to make Appellants appeal a self-evident effort to delay rather than a good faith urging of an attack on an annexation procedure on constitutional grounds. We charge that Appellants' motion in bringing this appeal is to delay for as long as possible the conclusion of this case. Their motion filed with this Court on September 23, 1963, in which they sought an order further staying the issuance of mandate and the maintenance of the status quo, is evidence in support of our charge. Such motion, which was overruled on September 30, 1963, by Mr. Justice Stewart, explains that the Trial Court, although upholding annexation by the City of Corpus Christi, had enjoined the City from performing any municipal functions within the said territory pending the disposition of the case on appeal to the Appellate Courts of Texas.

On Page 2 of Appellants' Jurisdictional Statement, it is said that the jurisdiction of this Court rests on Section 1257 (2) of Title 28, U.S.C.A. We challenge this assertion. Section 1257 sets out the circumstances under which decisions may be reviewed by this Court. Subsection 2 of Section 1257 reads as follows:

> "By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity."

On Page 13 of Appellants' Jurisdiction Statement, it is said that "the federal question was presented to the Court of Civil Appeals by the Fifth

Point in Appellants' brief", and such Point is quoted as follows:

> "The attempted annexation of the territory in question was not in due process of law and violated the due process provisions of the Constitution of the United States, being the 14th Amendment, and the Court of Civil Appeals erred in not so holding."

Can it be said that Appellants' Fifth Point truly draws "in question the validity of a statute" of this State? Before answering such question, please consider if it would be possible to phrase an attack on due process in any more vague or indefinite terms. No statute is mentioned nor is any ordinance referred to. If Appellants have made this Point in good faith, and if they expected the Court of Civil Appeals to react favorably to the same, then why clothe their attack in such vague generalities?

Appellants' brief under their Fifth Point does not add one iota of clarity to their proposition. In fact, their Fifth Point has been grouped for argument with their Sixth Point, which is a similarly vague attack upon alleged want of due process under the Texas Constitution, and their "Argument and Authorities" simply alleges that, in annexing, the City of Corpus Christi has refused to follow several of its Charter provisions. Not one single authority is cited, either under the state or federal constitution.

In Texas practice, it is said:

> "The purpose of a point of error is to point out, segregate, and identify the particular ruling or action of the Trial Court which it is contended constitutes reversible error, and assignment of error which does not segregate and identify particular proceedings in the Trial Court wherein it is contended error was committed is insufficient." [1]

Aside from its vagueness, Appellants' Fifth Point does not "point out, segregate and identify any ruling or action of the Trial Court which it is contended constitutes reversible error."

In the case of *Seaboard Air Line Ry. Co. vs. Watson*, this Court struck down, as being too indefinite, an assignment of error "which merely asserts that the State Supreme Court 'erred in holding that the scope and effect of Section 7051 . . . did not in the trial of the case in the court below deprive the . . . Railway Company . . . of its property without due process of law and of the equal protection of the law as guaranteed to it' by Section 1 of the Fourteenth Amendment".

The rule and statutory provisions involved in the decision of the *Watson case* called for assignments of error which shall "set out separately and particularly each error asserted". This is, in essence, what the Texas Court of Civil Appeals said in the

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[1] Commercial Travelers Casualty Co. vs. Perry, (Civ. App. 1955, no writ Hist.) 281 S.W. 2d 130, 131.

[2] 287 U.S. 86, 53 S.Ct. 32, 77 L.Ed. 180.

case of *Commercial Travelers Casualty Co. vs. Perry*, supra.

Writing for the Court in the *Watson case*, Mr. Justice Butler observed, concerning the assignment of error before them, that "an allegation of error could scarcely be more indefinite". As an original proposition, we might be inclined to agree with Mr. Justice Butler but, under the circumstances, we feel that Appellants' Fifth Point is even more indefinite than that in the *Watson case*.

The complaining party in the *Watson case* did limit his assignment to a deprivation of property, whereas Appellants have managed not to limit themselves in any manner. Appellants' assignment is so general that a decision of Appellants to argue deprivation of life or liberty, rather than deprivation of property, would not be outside its terms.

Aside from failing to specify the manner or mode by which they were being deprived of life, liberty or property without due process under the Fourteenth Amendment, Appellants' Fifth Point also completely fails to point out any particular ruling or action of the Trial Court which it is contended constituted reversible error. Appellants do not, for example, charge that the Trial Court erred in not granting their Motion for Instructed Verdict filed upon the basis that such ordinance was unconstitutional as depriving them of life, liberty or property without due process of law. Indeed, there is nothing in the Jurisdictional Statement to show that Appellants ever sought any such action from the Trial Court.

In view of the foregoing, we submit that the Court of Civil Appeals was not called upon to decide a federal question in this case. Moreover, Ordinance No. 6206 could not be held to deprive Appellants of life, liberty or property because the same merely had the effect of calling an annexation election. Ordinance No. 6242 is not, we submit, the type of statute contemplated by Section 1257 (2) of Title 28, U.S.C.A., because the passage of the same involved a ministerial, as opposed to a legislative, act. As seen from a reading of Section 2 (a) of Article I of the Charter of the City of Corpus Christi, which is quoted on page 5 of Appellants' Jurisdictional Statement: "If a majority of such qualified voters voting at such election favor the annexation of such territory, the same shall be annexed by ordinance of the City Council; * * *." Where the annexation proposition carries, the City Council has no discretion to exercise for it is bound to pass the ordinance.

Aside from the foregoing, there is another reason, we submit, why this Court has no jurisdiction over the appeal at bar. The basis of our attack is Appellants' failure to conform to Rule 15(d) of this Court. Aside from their pleadings, which simply give them the right to offer proof, Appellants have wholly failed to "specify the stage in the proceedings in the court of first instance * * * which, and the manner in which, the federal questions sought to be reviewed were raised." In addition, they have failed to specify "the way in which they were passed upon by the Court." Appellants should, we submit, show in their Jurisdictional Statement that they moved for an instructed verdict, or for Judgment, or

for some similar action on the part of the Trial Court. At the very least, we urge, Rule 15(d) requires that they specify what exception was made by them to the Court's refusal to rule in their favor on the federal questions they seek to establish. Under Texas practice, a party is not permitted to raise for the first time on appeal his objection or exception to a Judgment or ruling of the Trial Court.[1] It was, therefore, incumbent upon Appellants to show the Court of Civil Appeals that they had made the objection or exception in the Trial Court which they expected the Court of Civil Appeals to consider. Appellants have the same burden by Rule 15(d) in this Court.

From the foregoing, we see, therefore, that Appellants have not demonstrated to this Court that it has jurisdiction over the case as is required by Rule 15(d) of this Court. Likewise, their record is silent insofar as showing that they preserved their "federal question" for presentation to the Court of Civil Appeals.

Of even greater importance than any of the foregoing is the fact that the record before this Court does not demonstrate or reflect what federal questions, if any, were presented to the highest State Court. On pages 13 and 14 of their Jurisdictional Statement, Appellants have quoted the questions presented to the Court of Civil Appeals. Also, they have brought forward in the record copies of their

[1] *Plasky vs. Gulf Insurance Company*, 160 Tex. 612, 335 S.W. 2d 581, 584 (1960).

Brief and Motion for Rehearing before the Court of Civil Appeals. Notice, however, that they simply state their conclusion on page 14 that the same questions were presented to the Supreme Court of Texas. Appellants, no doubt, consider it prudent to treat this in a general, unsubstantiated way, but such treatment, we submit, does not conform to the mandates of Rule 15(d) which call for specifications. This Court has held that it is without jurisdiction of an appeal unless "the record shows that the question of the validity under federal law of the State statute, as construed and applied, has either been presented for decision to the highest Court of the State, * * * or has in fact been decided by it, * * * and that its decision was necessary to the judgment."[1]

II. The Questions Now Attempted to Be Raised Before This Court Were Neither Timely Nor Properly Raised Below. (Germane to Grounds for Dismissal C and D).

At this point, we shall demonstrate that Appellants have not preserved any one of the four questions which they set out on pages 6 and 7 of their Jurisdictional Statement. The following discussion will show that these questions were not timely raised.

Questions Numbers 1 & 3, as an examination will reveal, really comprise the same proposition. The one question is very general and the other is some-

[1] *Wilson vs. Cook* 327 U.S. 474, 66 S.Ct. 663, 90 L.Ed. 793 quoted from 90 L.Ed. p. 799.

what more specific, but both of them simply charge that the annexation was arbitrary, unreasonable and unjust. This same charge is contained in Appellants' Notice of Appeal to this Court and in their pleadings in the Trial Court, where it was treated as one proposition.[1] Also, it is found as one proposition in Appellants' Motion for Rehearing in the Court of Civil Appeals. The fact remains, however, that such charge was not, in any sense, contained in Appellants' Brief in the Court of Civil Appeals. Such Brief simply complains of three instances where Appellee City allegedly failed to follow its Charter provisions in connection with the annexation proceedings. The Court of Civil Appeals did not pass upon any federal question, and, we submit, it was not called upon to decide a federal question.

The foregoing demonstrates that Question Numbers 1 & 3 were not timely raised by Appellants. Certainly, as we have already shown under our jurisdictional discussion, the vague reference to the Fourteenth Amendment in Appellants' Brief before the Court of Civil Appeals does not properly raise a federal question.

When we examine Question Number 4, we find that it was contained in Appellants' Notice of Appeal to this Court as Question Number 2. With the exception of the allegation concerning the failure of the Appellee City to comply with the "laws of Texas," such charge is found in the Brief before the Court of Civil Appeals. However, such Brief

[1] Page 8 of the Jurisdictional Statement.

wholly fails to demonstrate how the alleged refusals to follow the Charter provisions in question deprived anyone, much less Appellants, of life, liberty or property under the Fourteenth Amendment to the United States Constitution. In fact, in arguing such Fifth Point in their Brief before the Court of Civil Appeals, Appellants have grouped it with a similar point charging lack of due process under the Texas Constitution, and their argument never draws any distinction between the two Constitutional provisions.

Probably the greatest fault with Question Number 4 is not concerned with its vagueness before the Court of Civil Appeals, but rather with the fact that there is no showing that a similar federal question was raised in the Trial Court. We have already seen that Appellants' pleadings, which they quote at page 8 of their Jurisdiction Statement, do not allege a failure to comply with the Charter provisions.

We see then that Appellants have not properly nor timely raised Question Number 4. The Court of Civil Appeals was not called upon to decide a federal question, because none was properly presented to it. In Texas, an appellant is deemed to have waived points of error and complaints not briefed.[1] This is the case with reference to Appellants' Fifth Point in the Court of Civil Appeals, because they have neglected to cite even one authority to support

[1] *Burgess vs. Sylvester*, 143 Tex. 25, 182 S.W. 2d 358 (1944); 4 Tex. Jur. 2d pp. 166-168 Sect. 658.

their position that there has been a want of due process under the Fourteenth Amendment.

That the Court of Civil Appeals did not decide a federal question is not challenged by Appellants.[1] This Court has held repeatedly that it cannot consider a question not raised or considered below.[2] Moreover, as we have previously pointed out, Appellants' record is absolutely devoid of a showing as to what questions were presented to the Supreme Court of Texas, the highest court of this State. This Court has always held that no Jurisdiction lies unless it affirmatively appears from the record that the federal question was actually decided by the highest state court.[3]

Concerning Question Number 2 in Appellants' Jurisdictional Statement, this can be disposed of in a summary manner. Rule 10 of this Court provides as follows:

> "Only the questions set forth in the notice of appeal or fairly comprised therein will be considered by the court."

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[1] Page 26 of Appellants' Jurisdictional Statement.

[2] *Bloeth vs. State of New York*, 82 S. Ct. 661, 7 L.Ed. 2d 780; *Wilson vs. Cook*, 327 U.S. 474, 66 S.Ct. 663, 90 L.Ed. 793, mandate conformed to 193 S.W. 2d 818; *Michel vs. State of Louisiana*, 350 U.S. 91, 76 S.Ct. 158, 100 L.Ed. 83, rehearing denied, 350 U.S. 955, 76 S.Ct. 340, 100 L.Ed. 831; *Walters vs. City of St. Louis*, 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660; *Hanson vs. Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed. 2d 1283, rehearing denied, 358 U.S. 858, 79 S.Ct. 10, 3 L.Ed. 2d 92, Opinion conformed 106 So. 2d 549.

[3] *Lynch vs. People of N.Y. ex rel Pierson*, 293 U.S. 52, 55 S.Ct. 16, 79 L.Ed. 191; *Wilson vs. Cook*, 327 U.S. 474, 66 S.Ct. 663, 90 L.Ed. 793.

Question Number 2, which charges that Ordinance No. 6206 is in violation of the Fourteenth Amendment, because no provision was made for notice and public hearing, is clearly not set forth in the Notice of Appeal nor is it fairly comprised therein. However, even if it could be said that such question is preserved, the fact remains that annexation is legislative in nature and it has been held by this Court that the Federal Constitution does not require a hearing before or in connection with the exercise of a legislative determination.[1]

The manner in which Appellants have abandoned allegations of error which they have found to be ineffective and the manner in which they have developed new ones at the various stages of this case reminds one of the girl who refashions her gown with the advent of each new season until by the end of the year the original gown can no longer be recognized. As can be seen by the manner in which Appellants have attempted to add Question Number 2, it appears that they do not hesitate to take a few new stitches even in the presence of the Court.

Appellants' spirit in wanting to improve upon their case from stage to stage can not be criticized, but they are limited to the questions they have raised below. We refer to Appellants' efforts to raise the provisions of Article 1182a before this Court. In this connection, please see pages 15 & 16 of their Jurisdictional Statement and also pages 23, 28 & 29.

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[1] 16A C.J.S. Section 569(5) pages 580-81, note 20.

Of course, Article 1182a has nothing to do with the facts of this case, as we shall briefly demonstrate, but the point is that the record before this Court contains nothing to indicate that a failure to comply with this provision has ever been alleged below at any stage.

We have said that Article 1182a has nothing to do with the facts of this case and we shall demonstrate this. Such Article, by its own terms, applies only where "an election for the extension of the territorial limits" of a city is called and the same is to be submitted to the *legally qualified property tax paying voters.* (Italics added.) Now, the annexation election which was called by the City Council of the Appellee City was not limited to the legally qualified property tax paying voters, but rather was submitted to all qualified voters. In this connection, please see Ordinance No. 6206 and Article I, Section 2(a) of the City Charter. This distinction has already been recognized in this State in the case of *Turner vs. City of Beaumont,* (Civ.App. 1946, err. ref. n.r.e.) 197 S.W. 2d 114.

The foregoing demonstrates that Appellants' Fifth Point in the Court of Civil Appeals was too vague to raise properly a federal question, and that the questions presented to this Court were not timely raised in the Court below.

III. The Constitutionality of Neither Ordinance No. 6206 Nor No. 6242 Was Expressly Passed Upon By the Court Below. (Germane to Grounds for Dismissal E and F).

The Court of Civil Appeals did not expressly pass upon the constitutionality of either Ordinance No. 6206 or Ordinance No. 6242. In this connection, please see the Court's opinion beginning on page 32 of Appellants' Jurisdictional Statement, and also page 26 of such Statement, where Appellants concede that the State Courts did not expressly decide any issue concerning the constitutionality of such ordinances. As we have already shown in our brief under Arguments I & II, the Court of Civil Appeals was not called upon to decide such issues because the same were not properly framed and were not timely presented. See Rule 16(b) of this Court.

IV. The Questions Presented Are Not Substantial Federal Questions. (Germane to Grounds for Dismissal G).

Even if it could be said that Appellants have preserved their questions for consideration by this Court, the fact remains that they do not present substantial federal questions.

Questions Nos. 1 and 3 charge that the annexation in question is in violation of the Fourteenth Amendment because it was arbitrary, unreasonable and unjust. Question No. 2 clearly has no place before this Court because it was not included in the Notice of Appeal. Question No. 4 charges that the Appellee City failed to comply with its Charter and the laws of Texas in carrying out the annexation in question and that this is in violation of the Fourteenth Amendment.

The due process clause of the Fourteenth Amendment to the United States Constitution reads as follows:

> "Nor shall any State deprive any person of life, liberty, or property without due process of law."

Ordinarily, when a person brings an appeal to this Court under the foregoing clause of the Fourteenth Amendment, you would expect him to show that he owned property, or had a right, or that he was incarcerated by the State, or that he was under a death warrant, or that he was being or about to be deprived without due process of law of something which was within the protection of the due process clause. Well, it seems too incredible to be true, but Appellants in the record before this Court are not shown to be property owners within the area in question. They were sued as individuals and as representatives of a class of petitioners for incorporation of the City of Flour Bluff, and they filed their answer and cross-action in the same capacities. They have not even alleged in the pleadings that they are property owners. Nowhere in the record has any one of them testified that he owns as much as a parcel of land in the annexed area.

Now, Questions Numbers 1, 3 and 4 refer to deprivation of life, liberty or property, or, in some cases, to all three, but nowhere do Appellants indicate to this Court how the deprivation of life, liberty, or property will be brought about. To discover the "how" is simply left to the ingenuity of the Court.

Obviously, there are some landowners living in the area annexed by the Appellee City. Also, it is obvious that these landowners will be required to pay ad valorem taxes to the Appellee City. The difficulty with Appellants' case is, however, that none of the taxpayers is shown to be a party litigant and Appellants have no standing before this Court to invoke the due process clause of the Fourteenth Amendment on behalf of others. This Court has held that in order to entitle one to a review by the Supreme Court of the United States of a Judgment of a State Court one must show a personal interest.[1]

We will now discuss the two propositions raised; the first with reference to the reasonableness and the second with reference to the failure to comply with City Charter provisions. First, we will treat the proposition of reasonableness posed by Questions Numbers 1 and 3. Notice in Question Number 1 that Appellants represent themselves to be property owners. As we have stated, no support for this representation is found in the record. They claim that the taxing of "their property" without furnishing municipal services in return amounts to a deprivation of property without due process and a taking of property without just compensation.

Please notice that Appellants do not point to a finding of the Trial Court to the effect that the annexation in question was arbitrary, unreasonable

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[1] *Barrows vs. Jackson*, 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586, rehearing denied 346 U.S. 841, 74 S.Ct. 19, 98 L.Ed. 361; *Tileston vs. Ullman*, 318 U.S. 44, 63 S.Ct. 493, 87 L.Ed. 603.

and unjust. Instead, Appellants point to a jury finding which they admit the Trial Judge disregarded. That the Trial Judge properly disregarded such jury finding is shown by the case of *State of Texas ex rel. Pan American Production Co. vs. Texas City.*[1] In that case, the Texas Supreme Court said at page 782:

> "This power of a home rule City to annex territory, being legislative power, is therefore not subject to being revised by the Judicial power of the courts."

Moreover, the Trial Judge acted properly in disregarding such jury finding, because the question of whether or not legislation is so unreasonable as to be void is a question of law for the Courts. Juries can decide fact questions only. In the case of legislation, the propriety is solely a question of law for the Court to decide, and if reasonable minds might differ as to its propriety, then it must be upheld as being within the legislative prerogative.

The Appellants have not even attempted to show how it is that they cannot receive any benefit from being annexed to the Appellee City. All of their evidence is based upon a certain viewpoint that a Mr. Gabe Lozano had with respect to whether or not a majority of the former City Council considered annexation wise when the petition for annexation was first filed with them on January 4, 1961.

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[1] 157 Tex. 450, 303 S.W.2d 780 (1957) appeal dismissed 355 U.S. 603 (1958).

This City Council left office in April, 1961 (S.F. p. 25). Ordinance No. 6206 calling for an election on the question of annexation was passed by the new City Council on July 12, 1961.[1]

The *Pan American Case*, supra, is very much in point with the case at bar. In that case, Texas City passed an ordinance annexing 3,500 acres of upland and some 2,000 acres of submerged land underlying two bodies of water, all immediately north of the existing city limes. A quo warranto proceeding was brought upon relation of Pan American Production Company and others, challenging the validity of the annexation ordinance insofar as it included submerged areas of Moses Lake and Dollar Bay. It was alleged that there were no inhabitants within the area in dispute and that the same was not suitable for habitation. In addition, there were numerous other allegations charging that the City had not good-faith intention of using such area for any municipal purpose, nor of furnishing to the area any City facilities or services. Specifically, it was alleged that the City sought to annex such area for the sole purpose of taxing relators' oil properties. The attack in question was grounded upon the Fourteenth Amendment to the United States Constitution as a deprivation of property without due process. Exceptions were leveled at such petition and upon hearing the Trial Court dismissed the case. The Court of Civil Appeals and the Supreme Court of Texas affirmed. Before the Supreme Court of the United States, on appeal, Appellee based its

[1] Jurisdictional Statement pp. 43-61.

Motion to Dismiss on the sole ground that the federal questions presented were not substantial. This Court dismissed the appeal.[1]

Please notice that the Pan American Case was never actually tried. Although the petition in that case contained extensive allegations, tending to support the Plaintiffs' position that the annexation was unreasonable as to them, the Trial Court dismissed the same as not stating a cause of action. Such dismissal was affirmed by the Court of Civil Appeals of Texas and by the Texas Supreme Court and this Court dismissed the appeal which was filed. In view of this, it would appear that the Courts agree that it is impossible to show that no benefits whatever flow to a given tract of land when it is annexed to a Home Rule City.

Appellants have never offered any proof showing they could not use fire and police protection such as Appellee City is able to provide, or that their area could not use sanitation services, street maintenance, traffic control, city planning, zoning, and all the other services a city of the size of Corpus Christi can provide.[2]

The very fact that the majority of the qualified voters favored separate incorporation of their area would seem to refute Appellants' contention that

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[1] *State ex rel. Pan American Production Co. vs. Texas City*, 157 Tex. 450, 303 S.W. 2d 780 (1957), appeal dismissed 355 U.S 603 (1958).

[2] U.S. Census for 1960 shows Corpus Christi with a population of 167,690.

the area could not receive any benefits from being attached to an organized municipal corporation.

Under Question Number 1 on page 6 of their Jurisdictional Statement, Appellants represent to this Court that Appellee City judicially admitted that the territory in question was unsuited for annexation to the Appellee City. In making such contention, Appellants simply indulge in deception. Appellants were attempting to incorporate a general law city, town or village. Under such circumstances, the State Legislature has provided that they can include "therein no territory except that which is intended to be used for strictly town purposes."[1] In making such allegations, we were attempting to show that Appellants had exceeded their statutory authority by including excessive territory. The authorities recognize that such provisions of Article 1134 are a delimiting factor in the case of general law cities, towns and villages.[2]

There is no such territorial limitation fixed by the Legislature on the power of a Home Rule City to annex. The only limitations applicable to a Home Rule City's power of annexation is that the territory shall be adjacent to the city and not included within the boundaries of any other municipality.[3]

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[1] Vernon's Ann. Civ. St. Article 1134, text can be found in Appendix.

[2] *Gray Production Co. vs. Christian*, (Civ. App. 1950), 231 S.W. 2d 901; and *State vs. City of Polytechnic*, (Civ. App. 1917), 197 S.W. 1136.

[3] *City of Houston vs. State ex rel. City of West University Place*, 142 Tex. 190, 176 S.W. 2d 928 (1943); and *State ex rel. Pan American Production Co. vs. Texas City*, 157 Tex. 450, 303 S.W. 2d (1957) appeal dismissed 355 U.S. 603 (1958).

Finally, the allegation that such territory is too extensive for incorporation into a town with a population of less than 5,000 does not amount to an admission that it is too extensive for annexation to a city already in existence, having a population of 167,690.

This Court has already determined, in the case of *Kelly vs. City of Pittsburgh*, 104 U.S. 78 (1881), that no question arises under the Constitution of the United States where property is annexed so long as some benefits are received by the territory involved. In that case this Court said at page 80:

> "It is not denied that the legislature could rightfully enlarge the boundary of the city of Pittsburgh so as to include the land. If this power were denied, we are unable to see how such denial could be sustained. What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation . . .
>
> ". . .
>
> "It is no part of our duty to inquire into the grounds on which those courts have so decided. *They are questions which arise between the citizens of those States and their own city authorities, and afford no rule for* construing the Constitution of the United States."

And at page 82:

> "It may be true that he does not receive the same amount of benefit from some or any of

these taxes as do citizens living in the heart of the city. It probably is true, from the evidence found in this record, that his tax bears a very unjust relation to the benefits received as compared with its amount. But who can adjust with precise accuracy the amount . . .

"We cannot say judicially that Kelly received no benefit from the city organization. These streets, if they do not penetrate his farm, lead to it. The waterworks will probably reach him some day, and may be near enough to him now to serve him on some occasion. The schools may receive his children, and in this regard he can be in no worse condition than those living in the city who have no children, and yet who pay for the support of the schools . . .

". . .

"Clearly, however, these are matters of detail within the discretion, and therefore the power, of the lawmaking body within whose jurisdiction the parties live. This court cannot say in such cases, however great the hardship or unequal the burden, that the tax collected for such purposes is taking the property of the taxpayer without due process of law."

The *Kelly case* was again followed by this Court in deciding the case of *Forsyth vs. City of Hammond*, 166 U.S. 506 (1896). In that case the Plaintiff had attacked the right of the City to annex 725 acres of his agricultural land on the basis that no benefit could be received from being included in the City. In upholding such annexation, this Court expressly cited *Kelly vs. City of Pittsburgh*, and held that

the matter of city boundaries is a local question and that as a rule the legislative determination was final and absolute.

In deciding the *Kelly case*, this Court observed that Mr. Kelly was going to receive some benefits by virtue of the fact that he had been annexed to the City of Pittsburgh. Although the Court recognized that he would probably not receive the same amount of benefits from some or any of the city taxes as did citizens living in the heart of the City, the Court placed no importance upon the fact that his benefits would not be proportionate to the benefits received by others. It appears, therefore, that in order to defeat the annexation in question, someone having the status of a taxpayer in the annexed area would have to show that their land would receive no benefits by virtue of such annexation. As we have shown, Appellants are not shown to be taxpayers. Moreover, Appellants have not shown that the territory in question will not receive any benefits from the annexation. To the contrary, all the evidence shows that the territory in question had a particular need to be included within a municipal corporation.

The second and final proposition which Appellants have attempted to raise in this case concerns their allegations that the City of Corpus Christi has not complied with its Charter provision in connection with the annexation proceedings in question. The State Courts in the case at bar have upheld the validity of the annexation proceedings by the Ap-

pellee City. Therefore, the State Courts have determined that there has been sufficient compliance with the State Constitution, State Statutes and with the Charter of the City of Corpus Christi. Appellants allege that there has not been compliance with certain Charter provisions, but they wholly fail to demonstrate how such alleged irregularities have resulted in deprivation of life, liberty or property under the Fourteenth Amendment to the Constitution of the United States. Whether an ordinance is valid, and the extent to which it is so, under the Constitution and laws of a State, is not subject to review by the Supreme Court of the United States.[1]

V. The Judgment In This Case Rests On An Adequate Non-Federal Basis. (Germane to Ground for Dismissal H).

That the determination of this case rests upon a non-federal basis has, we submit, been demonstrated under each of the preceding Points substantiating the other seven grounds for dismissal. Appellants, as we have already shown, have wholly failed to show that they have properly raised a federal question in the Trial Court, and they have likewise failed to show that they have properly preserved a federal question in each of the Courts below. The record before this Court certainly fails to show in an affirmative manner that a federal question was presented to the highest State Court. In addition,

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[1] *Independent Warehouses vs. Scheele*, 331 U.S. 70, 67 S. Ct. 1062, 91 L.Ed. 1346; *Lombard vs. West Chicago Park Commissioners*, 81 U.S. 33, 21 S.Ct. 507, 45 L.Ed. 731.

Appellants have failed to show that the questions presented before this Court represent substantial federal questions. Because of Appellants' failure to preserve their record below, the Court of Civil Appeals, as well as the Supreme Court of Texas, were not called upon to decide a federal question. In view of the above, the decisions below must necessarily rest upon a non-federal basis.

On pages 11 and 12 of the Jurisdictional Statement, under the section referred to as the Statement, and on pages 15 through 23 of that section of the Jurisdictional Statement referred to as Argument, Appellants have attempted to show to this Court, as an original proposition, that the petition for annexation, which was filed with the City Council on January 4, 1961, was legally insufficient. This attempt on Appellants' part wholly ignores the rule of law, well-established in this State, that the finding of the City Council that the petition was in fact sufficient is, in the absence of a showing of bad faith on the Council's part, final and binding when called into question in a judicial proceeding.[1] Likewise Appellants' contention ignores the fact that a petition for annexation is not a jurisdictional prerequisite insofar as the power of the City Council to call an election on the question of annexation is involved.[2] The Corpus Christi City Charter recognizes that the City Council may on their own motion call an election on the question of annexation.

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[1] See the opinion of the Court of Civil Appeals at page 35 of the Jurisdictional Statement.

[2] See Section 2 of Article I of the Corpus Christi Charter, on page 5 of the Jurisdictional Statement.

On pages 17 and 18 of their Jurisdictional Statement, Appellants have attempted to show that the annexation in question was void because of the fact that some of the territory annexed consisted of highway, road, street, alley, sidewalks, parks, and other ground which was owned by a political subdivision or which had been dedicated to public use. This contention is absolutely without merit. Appellants are referring to Section 2(c) of Article I of the Corpus Christi City Charter which reads as follows:

> "(c) The City Council shall have the power by ordinance to annex additional territory abutting and lying adjacent to the City which constitutes or is used for roads, highways, streets, alleys, sidewalks, parks, or any other grounds which are owned by any political subdivision or which have been dedicated to a public use and not exceeding a distance of 200 feet from the City Limits as established by annexation by some other provision of this Charter."

The above quoted provision of the City Charter is obviously not a limitation upon the other two modes of annexation as set out in subsection (a) and (b). That this is true is made evident by a reading of the introductory portion of Section 2 of Article I. There it is said:

> "The City of Corpus Christi is empowered to annex additional territory adjoining or lying adjacent to the City in the manner set forth in either of the following sub-sections (a), (b), or (c)."

We see, therefore, that there are three separate and distinct modes of annexation provided by the City Charter.

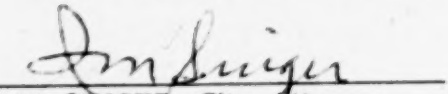
Based upon the foregoing, it is obvious that this case has been determined upon a non-federal basis and further, it is obvious that the State Courts have not attempted to evade a federal question because no federal question has ever been properly presented to them for consideration.

Conclusion

The City of Corpus Christi in the exercise of legislative power of annexation, in this instance exercised by the people themselves in an election, annexed certain territory. Each of the grounds for dismissal herein set forth by the Appellee are urged as sufficient grounds for dismissal of this attempted appeal from the Judgment of the State Court holding that the annexation was valid. Appellants' attempted appeal and grounds for jurisdiction in this case are so obviously without merit as to be easily recognized as a frivolous appeal. During all of the proceedings, the scanty references of the Appellants to any constitutional ground of defense to the validity of the annexation proceedings has been so veiled and general as to have been entirely ignored by each and all of the Courts through which the proceeding has passed and finally we find the grounds for jurisdiction to be vulnerable to a Motion for Dismissal on each of the eight grounds hereinabove set forth. It is obvious that the sole motive of the Appellants has been to delay the City in exercising municipal

authority over the territory annexed rather than to obtain protection of constitutional rights.

PREMISES CONSIDERED, for each of the grounds for dismissal hereinabove set forth, it is respectively submitted that the appeal should be dismissed.



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City Attorney
City of Corpus Christi
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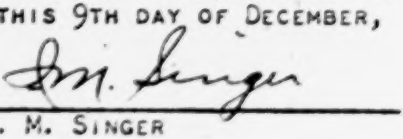
Corpus Christi, Texas
Of Counsel

SERVICE OF PROCESS

I, I. M. SINGER, A MEMBER OF THE BAR OF THE SUPREME COURT OF THE UNITED STATES, REPRESENTING THE APPELLEES HEREIN, DO HEREBY CERTIFY THAT THIS MOTION TO DISMISS HAS BEEN SERVED UPON APPELLANTS BY DEPOSITING A COPY THEREOF IN THE UNITED STATES MAIL IN CORPUS CHRISTI, TEXAS, WITH FIRST-CLASS POSTAGE PREPAID, ADDRESSED TO SIDNEY P. CHANDLER, P. O. BOX 6216, CORPUS CHRISTI, TEXAS, COUNSEL OF RECORD FOR APPELLANTS, THIS 9TH DAY OF DECEMBER, 1963.



I. M. SINGER

APPENDIX

ART. 1134. [1034] [580] [507] Mode of incorporation

If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provi-

sions of this chapter, shall file an application for that purpose in the office of the county judge of the county in which the town or village, the name by which it is to be known when incorporated, and accompany the same with a plat of the proposed town or village including therein no territory except that which is intended to be used for strictly town purposes. If any town or village be situated on both sides of a line dividing two counties, application may be made to the county judge of either county in which a portion of said town or village is located, in manner and form as herein provided. A new election shall not be ordered in less than one year. Acts 1889, p. 5; G.L. vol. 9, 1033.

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NO. 621

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

John R. Pennington, et al,

Appellants,

v.

City of Corpus Christi, et al,

Appellees.

On Appeal From the Court of Civil Appeals
for the Fourth Supreme Judicial District
of Texas, Sitting at San Antonio, Texas.

APPELLANTS' REPLY TO APPELLEES' MOTION
TO DISMISS APPEAL.

To the Supreme Court of the United States:

Now come John R. Pennington, et al, appellants in this suit and in reply to the Motion to Dismiss say:

If it were not for the fact that the appellees have filled their Motion to Dismiss with inaccurate statements appellants would not bother the Court with an answer thereto. The Motion to Dismiss is full of incorrect statements as to the record in this case. We will not burden the Court with references to all such statements but will use two or three as examples of misstaments so made. One very untrue statement appears on pages 6 and 7 of the motion saying: "At the outset, we charge that this appeal has been frivolously brought." (Emphasis added) This record refutes as incorrect and untrue said statement.

The next such statement appears on pages 13 and 14 of the Motion, saying: "The one question is very general and the other is somewhat more SPECIFIC, BUT BOTH OF THEM SIMPLY CHARGE THAT THE ANNEXATION WAS ARBITRARY, UNREASONABLE AND UNJUST. This same charge is contained in Appellants' Notice of Appeal to this Court

and in their pleadings in the Trial Court, where it was treated as one proposition. Also, it is found as one proposition in Appellents' Motion for Rehearing in the Court of Civil Appeals. The fact remains, however, that such charge was not, in any sense, contained in Appellants' Brief in the Court of Civil Appeals." The quotation in caps shows that the appellees and the Courts below understood the charge. The underlined portion of the quotation is not true. The proposition was fully discussed in the appellants' brief in the Court below and in their motion for rehearing in the Courts below. Those instruments are before this Court for inspection. On page 49 of the Appellants' Brief in the Court of Civil Appeals this is said:

> ". . . We have shown that the issue submitted covers the good faith question as well as other questions on the arbitrary acts of the Council. .. .

"We have said before, this suit was filed by the appellees, and even had the court had jurisdiction to try the case, the burden of proof was on the appellees to prove their case, including the validity of the ordinances.

"' It has been said that even though an ordinance is amendatory of a comprehensive zoning ordinance, it ispresumed to be valid. But of course that presumption is rebuttable. . . that presumption disappears when the facts show and it was determined by the court that the city acted arbitrarily, unreasonable and in abuse of discretion.' Bliss v. City of Fort Worth, 288 S. W. 2d 558, 563; Weaver v. Ham, 149 Tex. 309, 232 S W 2d 704,709.'

"The finding of the jury that the acts were unjust, unreasonable and arbitrary des-

troyed the presumption of validity of the 'assumed jurisdiction'".

A full discussion of the same subject is found on page 6 of the Motion for Rehearing in the Court of Civil Appeals. The facts are that the entire question was carried in the case from the first amended original answer of the appellants to this very moment in all pleadings, briefs, motions and applications required by the law.

The Appellees herein complain about "Point Five" but say nothing to speak of about the other points carried in the record. The Court of Civil Appeals considered the points in order, and so did the Appellees, for in that Court no objections were made, urged or sustained to any of the "POINTS OF ERROR' presented by the Appellants in the Court below. The Court of Civil Appeals considered and passed upon all the "points presented" saying:

"We have examined other points presented by appellants and find them without merit, therefore, they are overruled." (Jurisdictional Statement page 35).

The Appellees have written a lot about "assignments of error". This Court in section 4 of Rule 10 abolished "assignments of error" long ago in 1954. The Rules of Civil Procedure of Texas also abolished "assignments of error".

In People of State of New York et rel Bryant v. Zimmerman et al, 278 U S 63, 49 S Ct. 61 at 63, this Court says:

"There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the Constitution of the United States. No particular form of words or phrases is essential, but

only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented.

"Of course the decision must have been against the claim of invalidity, but it is not necessary that the ruling shall have been put in direct terms. If the necessary effect of the judgment has been to deny the claim, that is enough."

This record and the Jurisdictional Statement show that the constitutional question was fully presented to the courts below and ruled on by them contrary to the claim. The Motion to Dismiss should be overruled.

Respectfully submitted,

Sidney P. Chandler

Sidney P. Chandler
P. O. Box 6216
Corpus Christi, Texas,
78411
Attorney of record for
the Appellants.

I, Sidney P. Chandler, the attorney of record for John R. Pennington, et al, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26th day of December, 1963, I served a copy of the foregoing Reply to Motion to Dismiss on the Appellees by depositing the same in the United States Mail in the Postoffice in Corpus Christi, Texas, duly addressed to Honorable I. M. Singer, Esq., City Hall, Corpus Christi, Texas, one of the Attorneys of record for the Appellees, with first class postage paid.

Sidney P. Chandler

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Attorney for Appellants.